

Smt. Dropadi Devi and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Apr-12-1989

Reported in : AIR1990Delhi87

Judge : B.N. Kirpal, J.

Acts : [Constitution of India](#) - Articles 77, 363 and 372; Delhi Premises (Requisition and Eviction) Act, 1947 - Sections 3; [Code of Civil Procedure \(CPC\), 1908](#) - Order 26; [Evidence Act, 1872](#) - Sections 63, 65 and 66 - Order 11, Rules 12 and 14 - Order 12, Rule 8 - Order 13, Rule 2; [Constitution of India](#) - Articles XII(3), 166 and 365(1); [General Clauses Act, 1897](#) - Sections 3(29); [Government of India Act, 1935](#) - Sections 6; [Foreign Jurisdiction Act, 1947](#); Perpetuities and Accumulation Act; [Transfer of Property Act, 1882](#); Indian Registration Act; defense of India Act, 1962; defense of India Rules, 1962 - Rule 133; [Enemy Property Act, 1968](#); [Immovable Property Act, 1952](#); Requisitioning and Acquisition Act, 1952 - Sections 19 and 23

Appeal No. : Suit No. 654 of 1967

Appellant : Smt. Dropadi Devi and Others

Respondent : Union of India and Others

Advocate for Def. : Mrs. Avnish Ahlawat, ; Mukul Talwar, ; Prehlad Dayal an

Advocate for Pet/Ap. : Anil B. Divan, Sr. Advocate and; Vijay Gupta,; Anil Sharma

Judgement :

ORDER

1. The main question which arises in this suit, filed nearly 29 years ago, is as to whether the immovable property known as 3, Mansingh Road, New Delhi belonging to late Maharaja Jagatjit Singh, the erstwhile ruler of Kapurthala State, as his personal property at the time when the said Kapurthala State, along with other States, acceded to and merged in the Union of India in the year 1948.

2. This suit was filed by Radhasham Makhanlal Seksaria for a declaration that he was the sole and absolute owner of the aforesaid immovable property and was entitled to exercise all rights of ownership in respect thereof. Union of India has been imp leaded as defendant 1 while State of Punjab has been imp leaded as defendant 2 and Sukhjit Singh, grandson of late Maharaja Jagatjit Singh, is the third defendant.

3. The facts as alleged by the plaintiff in the plaint are, as follows:

(a) By Indenture of Lease dt.13th July, 1921 a plot of land measuring 3.04 acres situated at 3, Man Singh Road, New Delhi was granted on perpetual lease by the Secretary of State for India to one Khan Bahadur Abdul Hamid. Pursuant thereto a house was constructed on the said land.

(b) On 19th Jan. 1935, by a duly registered conveyance, the aforesaid Khan Bahadur Abdul Hamid sold and conveyed the said immovable property to Maharaja Jagatjit Singh for a sum of Rs. 1,05,000/-. At that time the State of Kapurthala was independent and had not merged in the State of Patiala and East Punjab States Union (hereinafter referred to as 'PEPSU').

(c) It is alleged that on 1st March, 1937 Lt. Col. C.P. Fisher, the then Prime Minister of Kapurthala State, prepared an 'Aide Memoire' which purported to set out as to what were the private and personal properties of Maharaja Jagatjit Singh and what were the State properties. In the said 'Aide Memoire' .the property, 3 Mansingh Road, New Delhi, as well as certain other immovable properties in Mussoorie were mentioned and treated as State properties. According to the

plaintiff, such treatment of the properties was erroneous as the same were in fact private and personal properties of Maharaja Jagatjit Singh. It is further alleged that Maharaja Jagatjit Singh, in exercise of his sovereign powers as a Sovereign Ruler of Kapurthala State, issued a Command dt.1st Jan. 1940 under the signature of Tika Raja, President State Council, which was in the following terms:

'His Highness Maharaja is pleased to command that in future all the houses in Missouri and Kapurthala House, New Delhi will be considered as his personal and private properties and 'Aide Memoire' dt. 1st, March, 1937 shall be inoperative and ineffectual so far as the above properties are concerned.'

(d) Maharaja Jagatjit Singh died in or about 1949 and as per his last will and testament all his properties were bequeathed to his eldest son Paramjit Singh, father of defendant 3. Paramjit Singh, being the eldest son of Maharaja Jagatjit Singh, now became the Maharaja of Kapurthala. It is further alleged that by a registered Indenture of Conveyance dt. 10th Jan. 1950 Maharaja Paramjit Singh sold and conveyed the said immovable property to the plaintiff and to one Dewan Germandas for a total consideration of Rs. 1,50,000/ -. In the said deed, it was recited that Maharaja Paramjit Singh was in possession of the said immovable property as the absolute and sole owner thereof. The conveyance also contained a clause to the effect that the vendor agreed to indemnify the vendee against any losses, damages etc. which may be incurred, inter alia, for the reason that the vendees are deprived of the whole or any part of the said property by reason of any defect found in the vendor's title.

(e) Thereafter on 17th Jan. 1950 Maharaja Paramjit Singh wrote a letter to the Chief Commissioner, Delhi informing him that the aforesaid property had been sold and the Chief Commissioner was requested to effect the necessary mutation and change in the land records regarding the ownership of the lease- hold rights of the said land.

(f) After the execution of the conveyance deed dt. 10th Jan. 1950 possession of the said property is alleged to have been handed over to R.M. Sekseria and Dewan Jarmanidas. Soon thereafter, the said property was requisitioned under S. 3 of the Delhi Premises (Requisition and Eviction) Act, 1947 vide an order dt.17th

June, 1950. This requisition was with effect from 15th July, 1950 and the order of requisition was addressed to R.M. Seksaria and Dewan Jarmanidas. As a result of passing of the said order, the Estate Officer of the Government of India took possession of the immovable property on or about 4th Dec. 1950.

(g) It is alleged that the entire sale consideration of Rs. 1,50,000/- was paid to Maharaja Paramjit Singh out of the funds of Seksaria and as Dewan Jarmanidas had been joined as a vendee merely for the sake of convenience, the said Dewan Jarmanidas, by a registered Indenture of Transfer dt. 21st Feb. 1951 transferred and conveyed his undivided share in the said immovable property to Seksaria. It is alleged that as a result thereof, Seksaria became the sole and absolute legal owner of the said immovable property.

(h) Thereafter some correspondence was exchanged between Seksaria and Government officials with regard to payment of compensation in respect of the said immovable property which had been requisitioned. A letter was written on 2nd March, 1951 by the plaintiff's attorney requesting for payment of compensation. The Estate Officer to the Government of India, by his letter dt.17th April, 1951, informed that the compensation would be payable with effect from 4th Dec. 1950 on which date the possession was taken over. Seksaria was asked to furnish certified copies of the sale deed and transfer deed to enable action being taken in this regard. Vide his attorney's letter dt.19th May, 1951 Seksaria sent to the Estate Officer the documents which were asked for. It was also stated that as the immovable property had been requisitioned with effect from 15th July, 1950 the compensation should be paid with effect from date and not with effect from 4th Dec. 1950. When no reply was received to this communication, a reminder was sent by Seksaria's on 31st May, 1951. Thereafter the Estate Officer sent a reply dt.21st Sept. 1951 in which it was stated that the immovable property in question was the property of PEPSU and that the Government of India did not recognise Seksaria as the owner of the immovable property and, therefore, there was no question of the Government paying any compensation to Seksaria in respect thereof.

(i) As noted earlier, Maharaja Paramjit Singh had written to the Chief Commissioner to effect the necessary mutation and change in the land records regarding ownership of the property after its sale to Seksaria and Dewan Jarmanidas. A similar letter was also written by Dewan Jarmanidas on 18th Jan. 1950 to the Chief Commissioner. When no reply was received, Seksaria's attorney wrote another letter dt. 24th Sept. 1951 requesting the Chief Commissioner to look into the matter and to effect the necessary mutation and change in the land records. A reminder dated 17th Oct. 1951 was sent and ultimately a reply was received vide a letter dated 16th Nov. 1951 from the Land & Development Officer, New Delhi intimating Seksaria that the Government of India had classed the immovable property as State property and as such the said property belongs to PEPSU.

j) It is further contended that negotiations and correspondence was exchanged by Seksaria with the Government of India but to no avail as the Government of India considered the property as belonging to the Kapurthala State and not as the private and personal property of the Maharaja. The Government of India, consequently, was of the opinion that the sale by Maharaja Paramjit Singh in favor of Seksaria and Dewan Jarmanidas was invalid.

(k) Maharaja Paramjit Singh died in 1954 leaving behind him defendant 3, Sukhjit Singh, his son, as his only next of kin. Even according to the rule of primogeniture prevailing in the Kapurthala State, it is alleged that the said defendant 3 is the heir of late Maharaja Paramjit Singh.

(l) The submission of the plaintiff in the plaint is that the property in question was purchased by Maharaja Jagatjit Singh in his own individual name and capacity and not in his capacity as a sovereign ruler of the Kapurthala State. It is further alleged that even if it be assumed that the said property was originally purchased as the property of Kapurthala State, subsequently Maharaja Jagatjit Singh exercised his sovereign powers and divested the Kapurthala State of its ownership and vested the said property in himself in his individual capacity by virtue of the Command dt. 1st Jan. 1940. It is further alleged that after the death of Maharaja Jagatjit Singh the said property was inherited by Maharaja Paramjit Singh and he had the

absolute right to sell the same in favor of Seksaria and Dewan Jarmanidas. In the alternative, it is also alleged that Seksaria and Dewan Jarmanidas were bona fide purchasers for value of the said property without notice that Maharaja Paramjit Singh held the property for and on behalf of the Kapurthala State and/ or PEPSU and, therefore, the sale in favor of the plaintiff and Dewan Jarmanidas was binding on all the parties.

(m) The plaintiff has claimed, as owner of the property, a sum of Rs. 2,82,250/- as compensation for the requisition of the immovable property with effect from 4th Dec. 1950 to 30th April, 1960. There is a further claim of Rs. 2500/- per month with effect from 1st May, 1960 up to the days when the requisition orders were withdrawn and the possession handed over to the plaintiff. Lastly, the plaintiff has, in the alternative, claimed a sum of Rs. 4 lacs from the third defendant if it is found that the sale made by Maharaja Paramjit Singh was not valid. This claim against the third defendant is on the basis of the clause contained in the Deed of Conveyance dated 10th Jan. 1950 wherein Maharaja Paramjit Singh had agreed to indemnify the purchasers against any loss or damage suffered by them.

4. On behalf of Union of India, defendant 1, the claim of the plaintiff was refuted. It was alleged by defendant I that the claim of damages at the rate of Rs. 2500/- per month for the period beyond 3 years was time barred. It was also alleged that the suit property had been declared to be state property and not the personal property of the late Maharaja of Kapurthala and that the said question was no longer justiciable. It was further submitted that under the Articles of Covenant of Succession it was open to the Maharaja of Kapurthala, if he did not agree with the classification of any property as state property to refer the dispute to arbitration and as no such reference had been made, said classification became final. On merits, it was contended that the property in question was purchased by the late Maharaja from the revenue of the state and the said property did not belong to him personally. Reliance was placed on the Aide Memoire dt.1st March, 1937 in which the property was shown as state property. It was also contended that Maharaja Paramjit Singh had no right to sell the property in question and, in any case, the sale had been effected without the previous permission of the Chief Commissioner of Delhi and was not valid. While reiterating that the property in question was state

property, it was contended that the plaintiffs were not entitled to claim any compensation during the period when the property was requisitioned and, further, as no rate of compensation had been determined, therefore, no fixed amount could be claimed by any one.

5. The State of Punjab, defendant 2, in its written statement averred that Maharaja Jagatjit Singh had purchased the property in question from the revenue of the Kapurthala State for the purposes of the State and that the same was not his personal property. Reliance was also placed on the Aids Memoire prepared by Col. Fisher. The said defendant did not admit that any command dt.1st Jan. 1940 was issued and, in the alternative, it was submitted that the Tikka Raja had no authority or power to issue such a command under his signatures on behalf of the Maharaja. It is also the case of the said defendant that even if the Maharaja had issued such a command, the property in question could not have been converted into personal and private property. The said defendant did not accept the validity of the sale of the property by Maharaja Paramjit Singh in favor of Seksaria and Dewan Jermanidas. It is further alleged that the alleged sale deed executed on 10th Jan., 1950 by Maharaja Paramjit Singh in favor of Seksaria and Dewan Jermaindas for Rupees 1,50,000/- was void and ineffective, as the property in question belonged to the Kapurthala State which vested in the erstwhile State of PEPSU and thereafter in the State of Punjab. It is also contended that the civil Courts could not go into the declaration of Ministry of State whereby the said property had been declared as belonging to the erstwhile Kapurthala State and not to Maharaja Jagatjit Singh in his personal capacity. The alleged sale of 10th Jan.,1950 and the transfer of 21st Feb.,1951 were alleged to be fictitious and sham transactions and that with the signing of the covenants by the Rulers, the Kapurthala House became the property of the State of PEPSU.

6. Defendant 3 in the written statement filed by him has supported the averments made in the plaint but has denied his liability to indemnify the plaintiffs from and against any losses, damages, costs etc. which they might have suffered. It was further alleged that the property was inherited by the answering defendant by virtue of the law of Primogeniture and the estate so inherited and being ancestral was not, according to custom and law, subject to any liability for any acts done or

committed by the previous holder.

7. Seksaria filed replications reiterating what has been stated in the plaint and denying the correctness of the allegations contained in the said written statements of defendants 1 and 2. It was reiterated that the command dt.1st Jan., 1940 issued by Tika Raja was a law by itself and it rightly vested the said property in the Maharaja. According to the plaintiff, the property in suit never belonged to the Kapurthala State and did not, therefore, after merger become the property of the State of Pepsu or the State of Punjab. It was also contended that the declaration made by the Ministry of State with regard to the property in question was without jurisdiction and authority of law.

8. On the basis of the pleadings of the parties, the following issues were framed:

1. Was the property in dispute personally owned by the father of defendant 3, and did he sell that to plaintiff and Dewan Jarmani Das? (Onus Objector)

2. Has the said Jarmani Das transferred his interest in the said property in favor of Plaintiff? If so to what effect?

3. Was the said Jarmani Das added in the said sale in collusion with the vendor and the plaintiff? If so to what effect?

4. Was the property in dispute declared as the state property of erstwhile Patiala and East Punjab States Union? If so, to what effect?

4A. Could the said declaration be effected and was that done in accordance with law?

4B. Could the said declaration violate the principles of natural justice? If so to what effect?

5. Did the said declaration constitute as an 'act of State', and therefore the suit is not maintainable and cannot be entertained by this Court?

6. Was there any arbitration clause in the Covenants of Instrument of Accession? If so, to what effect?

7. What is the effect of the said arbitration clause having been not invoked?
8. Did defendant 1 requisition the property in dispute treating plaintiff as the owner of the property in dispute? If so, to what effect?
9. What is the effect of the defendant 3 and his family being governed by the rule of primogeniture on the present suit?
10. If it is proved that the father of defendant 3 was not the owner of the property in dispute, and further if it is proved that defendant 3 has inherited the estate of his father, then is defendant 3 not liable to recompensed the plaintiff for the amount in dispute?
11. Cannot the suit for the compensation be maintainable?
12. To what compensation is the plaintiff entitled to and from whom?
13. To what amount, if any, is plaintiff entitled towards the price of the property in dispute, and from whom?
14. Is the suit within time with respect to compensation? (Objected to).
15. Relief.

9. During the pendency of the suit, R.M. Seksaria, who had filed the suit, died and in his place, vide order dt. 5th Nov.,1973, his legal representatives were brought on record as plaintiffs.

10. Apart from the documentary evidence placed on the record, the parties also examined witnesses in support of their case. During the pendency of the trial of the suit, the lawyers appearing in Delhi Courts went on strike leading to the suspension of the examination of witnesses. However, the parties desired that the remaining witnesses be examined on commission. This request was acceded to and the balance of the evidence of the parties was recorded by Commissioner appointed by the Court.

11. I will now deal with the various issues arising in this case.

Issues 1, 2 and 3.

12. The only question which arises for consideration in this case is as to whom did the impugned property in Delhi belong.

13. It is not in dispute that perpetual lease for the plot of land on which the house was constructed was granted in favor of Khan Bahadur Abdul Hamid by the Secretary of State for India in Council. It is also an admitted case that by a sale deed executed on 19th Jan., 1935 the house in question was purchased by Maharaja Jagatjit Singh from Abdul Hamid.

14. The case of defendant 2 is that money for the purchase of the said property came out of the State Treasury and, therefore, even at the time of purchase, the house belonged to the State and not to the Maharaja in his personal capacity. According to the plaintiffs, however, at the time when the property was purchased, the private income of the Maharaja was intermingled with the State income and at that point of time there was no revenue surplus as far as the State was concerned but the Maharaja had estates in Avadh which were yielding income and the said income was also put in the State Treasury. The further submission is that all household and other expenses of the Maharaja were being incurred out of this common fund which was augmented by the income from the Oudh Estates.

15. It is not in dispute that the revenues from the Oudh estates used to be incorporated in the Administration Reports of the Kapurthala State. According to the said reports, Exs. PW7/1 to PW7/6, (being the reports for the years 1930-31 to 1935-36) the Avadh income used to be added to the Kapurthala State revenues. With effect from the years 1936-37 and onwards, at least till 1945-46, Exs. PW7/ 7 to PW7/13, the income from the Oudh estates was not included in the said reports which contained the income and expenditure account of the Kapurthala State.

16. The perusal of Exs. PW7/1 to PW7/6 shows that in respect of Kapurthala State income for the years 1930-31 to 1935-36 there was, in every year, excess of expenditure over income. On the other hand, in the case of Oudh Estates, in respect of these years, there was always excess of income over expenditure. The contention of the defendants is that there is no document on the record to show

that Oudh Estates at any time belonged to the Maharaja of Kapurthala.

17. It appears that the said Estates were granted to the erstwhile ruler of Kapurthala in the year 1857, after the Mutiny. In the report of the Administration of Kapurthala for the year 1945-46 (Ex. PW71/13) it is stated that 'the Ruler of the Kapurthala State also owns large estates in Oudh bestowed upon his grandfather Raja-Rajan Randhir Singh in recognition of the conspicuous services rendered during the mutiny of 1857. The estates yield an annual income of Rs. 19 lacs'. In addition thereto, the fact that the accounts of the Oudh income were separated from the State accounts with effect from the year 1937-38 onwards would itself show that the said income did not belong to the State. If the Oudh estates had belonged to the State of Kapurthala, and not to the Maharaja in his individual capacity, then the two incomes would, in the first instance, not have been shown separately but intermingled till the year 1935-36 and thereafter excluded from the State revenues with effect from the year 1936-37 onwards. There is no evidence of any overt act having been done suggesting transfer of this property from the State to the Maharaja in his individual capacity in the year 1936-37. The said reports on Administration can only lead to one conclusion and that is that the property in Oudh was regarded as belonging to the Maharaja in his individual capacity and when it was decided that the individual and State income should be separated from each other, the reports of Administration with regard to the finances of the Kapurthala State did not make any mention of the income from Oudh.

18. In the abovementioned Aide Memoire dated 1st March, 1937 it had been recorded in para. 4 that 'it was confirmed by his Highness that it was one of the terms of the agreement referred to above that no further requests should be made by the State for any money realised by sale of land or property in Oudh.' It is also clear from this that the Oudh Estate was regarded as the personal property of the Maharaja and the further inference which follows from the aforesaid is that previously moneys from Oudh estates were being used for the purpose of the State of Kapurthala, but such use was not to take place in future. In the Aide Memoire of July, 1948 Ex. D-2/ 5 late Maharaja Jagatjit Singh has stated that 'My estates in Oudh were granted to my grandfather Maharaja Randhir Singh and the Rulers of Kapurthala have had special position as premier Taluqdars in Oudh

.....'. It has further been stated therein that 'the income of the Oudh estates used to form an integral part of the state revenue until 1935, when Col. Fisher who was my Chief Minister in those days separated the Oudh from the Kapurthala State and earmarked the income of the Oudh estates for my households.....'. It is not necessary to refer to any letters written by Paramjit Singh relating to the status of the Oudh estates in view of the fact that the aforesaid evidence, including documents to which Maharaja Jagatjit Singh himself is a party, show that Oudh estates were the personal property of the Maharaja.

19. From the aforesaid, it will follow that because of the intermingling of the funds of the State with the individual income, it cannot be said that the property in question was purchased in Jan., 1934 out of the State funds. In fact, as has been noticed hereinabove, the State always had a revenue deficit and it is the income from the Oudh Estates, which was the private income of the Maharaja, which augmented the finances of the State. thereforee, when out of these funds the property in question was brought in Delhi, it would be safe to conclude that it was Maharaja's own income which had financed the purchase. Furthermore, in the sale deed itself the vendee is described as 'His Highness Maharaja Jagatjit Singh Bahadur ... Ruler of Kapurthala State, hereinafter called the vendee, which expression shall mean and include his heirs, executors, administrators'. At least at that stage the intention was that the property in question belonged to the Maharaja and, after him, would devolve upon his heirs etc.

20. The contention of the plaintiffs that the said property at Delhi was purchased by the Maharaja in his personal capacity, and not on behalf of the State, is also evident from another circumstance. When the new capital of India was being established at Delhi, a plot of land was allotted to the different States of India in an area known as 'the Princes' Area.' This area is near and around the India Gate. The State of Kapurthala was, admittedly, allotted a plot of land in the Princes' Area, prior to the purchase of the aforesaid property by the Maharaja. The house in question which was purchased by the Maharaja was situated not in the Princes' area but in the 'Dewans' and 'Raies' area of New Delhi. After the Maharaja purchased the suit property, the State of Kapurthala expressed its desire to surrender the plot of land which had been allotted to it in the Princes' Area. This

plot was, with the permission of the Government, surrendered and was subsequently allotted to the State of Travancore. The testimony of defendant 3 in this regard is as follows:

'The State of Kapurthala was also allotted by the Government of India a plot of land in the 'Princes Area' of New Delhi prior to the purchase of the suit property by my grandfather. Others princely States were also allotted plots of land in the 'Princes' Area' for construction of State Houses. Most of the said States did construct their State Houses in the said 'Princes' Area', which are still in existence i.e. Patiala House, Faridakot House, Hyderabad House etc. The suit property is situated not in the 'Princes' Area' but in the 'Diwans' and 'Raies' Area' of New Delhi. The State of Kapurthala was allotted the plot of land on the site where the present Travancore House on Curzon Road exists. (Where the MRTP Commission is now housed). The lease of the said plot of land was in the name of the 'Kapurthala Darbar'. The State of Kapurthala had also paid the stipulated premium, (Rs. 10,800/-) for the said land to the Government of India. The State of Kapurthala also constructed a boundary wall on the said plot of land at a cost of Rs. 1060/-. However, subsequently my grandfather purchased the suit property. The State of Kapurthala then expressed to the Government of India the Darbar's wish to surrender the plot of land allotted to it. The Government of India was pleased to grant such permission subject to the condition that only when some other State accepts the said plot of land, the State of Kapurthala could obtain the refund of the premium. The Travancore State eventually accepted the said plot of land and the Kapurthala Darbar received refund of the premium.'

In his cross-examination by the counsel for the plaintiff, defendant 3 further stated as follows:

'Prior to the purchase of land in question a plot of land was allotted to Kapurthala Darbar on what was then known as Curzon Road, where now the present Travancore House stands and where the M.R.T.P.C. Offices are located. The area was known as Princes'Area and there are' a number of State Houses specially designated, such as Patiala House, Hyderabad House etc. All these houses were built up in this area when new capital of Delhi was developed. The property in suit

was not situate in what was known as Princes Area. To the best of my knowledge, it was known as Diwan and Raises Area.

(Mr. Vijay Gupta, counsel for the plaintiff:- I tender in evidence the summoned file from the National Archives, which is marked as D3W-s/3). To the best of my knowledge the land which now forms part of the Travancore House was surrendered by Kapurthala Darbar after my grandfather had purchased the property at Man Singh Road. This land was surrendered by Kapurthala Darbar after obtaining permission of the Government'

There was no cross-examination on this point either by defendant 1 or by defendant 2.

21. The file from National Archives, Ex. D3W2/ 3 contains a letter dt. 10th Aug., 1934 written by the Agent to the Governor General to the Political Secretary to the Government of India in which it is, inter alia, stated as follows:

'In January of this year the Maharaja of Kapurthala purchased a house in New Delhi - No. 2, Mansingh Road - from Sir Abdul Hamid, his Chief Minister. I reported this fact to the Chief Commissioner, Delhi, in accordance with Cl. II of Government of India, Foreign and Political Department, Resolution No. 2563-1161 - Internal, dt. the 19th Dec., 1922, and the Chief Commissioner informed me that the Government of India had no objection. At the same time I enquired from the Kapurthala Darbar their intention regarding the site allotted to them in the Princes'Area, New Delhi, which is still lying vacant and, in view of the correspondence resting with my confidential demi-official letter.....suggesting the possibility of their relinquishing it. The Darbar have now in reply stated that they presume that, if the site is relinquished, the premium which they paid Rs. 10,800/- will be refunded but they have asked me to give them definite information on this point to enable them to come to a final decision as regards relinquishment

.....
the event of the orders of the Government of India being that refund cannot be granted unless the site to be relinquished is taken over by another Ruler, it would seem probable that the Kapurthala Darbar will decide not to relinquish the site for the present and I would suggest that it be made clear in the orders of the

Government of India, if they are to this effect, how long they will suffer the Kapurthala Darbar to remain in possession of a vacant site in the hope of getting another Ruler to take it over or with the vague and unlikely idea of the Maharaja of Kapurthala building there in the indefinite future now that he has acquired a residential house in New Delhi.'

The tenor of the aforesaid letter leaves no manner of doubt that, according to the Government, the Maharaja had purchased the house from Sir Abdul Hamid as his own residence. The plot which had been allotted in the Princes' Area had been allotted to the State of Kapurthala. That is why reference with regard to the allotment of plot is made to the 'Kapurthala Darbar'. The said letter seems to regard the 'Kapurthala Darbar' as being different from the Maharaja. The request for the surrender of the plot in the Princes' Area was received by the Govt. of India from the Kapurthala Darbar, and not the Maharaja, and it is the Darbar which wanted to get the refund of Rs. 10,800/- which had been paid by it. The statement in the letter that 'he (the Maharaja) has acquired a residential house in New Delhi' clearly shows that the Government regarded the said acquisition as being the personal property of the Maharaja who, having acquired the same, would no longer be interested in the Kapurthala Darbar constructing another house on the plot of land allotted to it in the Princes' Area. I am, therefore, unable to accept the contention of the learned counsel for defendants 1 and 2 that the suit property purchased by the Maharaja from Sir Abdul Harnid, at the time of the purchase, was not his personal property.

22. As already noticed, on 1st Mar., 1937 Lt. Col. C.P. Fisher, who was the Prime Minister of Kapurthala State, prepared a document called 'Aide Memoire'. This document purported to mention, separately, the properties which were the personal properties of the Maharaja and those which were State properties. The immovable properties in Mussoorie and the property at 3, Mansingh Road, Delhi, which is the subject matter of the suit, were regarded as State properties. According to the plaint this treatment of the said properties was incorrect as the same were private and personal properties of the Maharaja and, therefore, in exercise of its sovereign powers a command dt. 1st Feb., 1940 was issued under the signatures of Tika Raja, President State Council, which command was in the

following terms:

'His Highness Maharaja is pleased to command that in future all the houses in Mussoorie and Kapurthala House, New Delhi, will be considered as his personal and private properties and 'Aide Memoire' dt. 1st Mar., 1937 shall be inoperative and ineffectual so far as the above properties are concerned. '

23. The important question which arises for consideration is whether the aforesaid command dt.1st Feb., 1940 exists and if it does, whether it is admissible in evidence and, thirdly, what is the effect of the said command.

24. In the written statements filed by the defendants, the existence of the command was not admitted. Defendant 3 had filed a copy of the said command which was marked 'A'. In order to prove the document, defendant 3 had summoned the correspondence file from Punjab Estate Officer, Punjab Works Department. The Archives Department forwarded the file to this Court, pursuant to the summons having been issued. On 30th Oct., 1987, when the examination-in-Chief of defendant 3 had been partly recorded, counsel for all the parties agreed that in order to cut short the time taken for recording of evidence, the further examination-in-chief of defendant 3 will be by affidavit with right to the other parties to cross-examine him.

25. Pursuant to the aforesaid order dated 30th Oct., 1987 an affidavit of defendant 3 was filed in which he referred to the fact that file had been summoned from the Punjab Archives which would contain a copy of the command dt.1st Feb., 1940. It was further stated in the said affidavit that 'a copy of the said command was Ex.D3/W2/1'. Relying upon the decisions of *P. C. Purshothama v. S. Perumal* : [1972]2SCR646 and *Ali Hasan v. Matiullah* : AIR1988 All57 it has been contended on behalf of the plaintiff that as the document has been Exhibited without any objection, it is not open to the defendant, at a later stage, to object about its admissibility.

26. As would be evident, due to the procedure which was adopted in this case with the consent of the counsel for the parties, it was not possible for the defendants to object to the documents being exhibited at the initial stage. The document was

purported to be Exhibited by way of the affidavit being filed, which affidavit was treated as examination-in-chief. It is in this affidavit that it is stated that the said document was being exhibited as Ex. D3 / W2/ 1'. If the examination-in-chief of defendant 3 was being recorded in Court and if, at that stage, no objection was taken to the said document being exhibited then, of course, the ratio of the decisions in the aforesaid cases would have squarely applied. But in this case, as already noted, the examination-in-chief with regard to this document was by filing of the affidavit and at that stage the defendants could not object.

27. Nevertheless, the defendants did have an opportunity of challenging the correctness or the existence of this command when they cross-examined defendant 3. It may here be noted that on 9th Nov., 1987 the cross-examination of defendant 3 was partly concluded and the case was adjourned to the next day. On the next day the lawyers went on strike and the case was adjourned to 30th Nov., 1987 for directions. On 30th November, 1987 the case was listed on 19th Feb., 1988 for cross-examination of defendant 3 and the evidence of the other parties. Once again the Lawyers went on strike and defendant 3 could not be cross-examined in Court. The parties then jointly filed an application I.A. 1078 of 1988 under O. 26, C.P.C. praying that the further cross-examination of defendant 3 be completed before a Local Commissioner. Ms. Vinita Saxena, Advocate was appointed as Local Commissioner and further cross-examination of defendant No. 3 and evidence of defendants 1 and 2 and also the evidence in rebuttal was directed to be recorded by the Commissioner. In answer to questions in cross-examination by counsel for the plaintiff ' defendant 3 deposed that the heir apparent, namely, Tika Raja could normally be appointed as the President, State Council in Kapurthala. The Tika Raja in this case in 1940 was defendant 3's father, namely, Paramjit Singh. In answer to a further question it was stated by defendant 3 that normally a command issued by the ruler would be signed by the President, State Council or, in his absence, by the Chief Minister. It was further deposed that the ruler himself could also sign the command either individually or with his heir apparent. It may also be noted that in his evidence, by way of examination-in-chief, defendant 3 had stated, with reference to the command dt.1st Feb., 1940, as follows:

'I had also seen the original command. It was signed by. my father late Maharaja Paramjit Singh who was then the Tika Raja and the President, State Council.'

He also stated in the said affidavit that the property was exclusively used by the Maharaja of Kapurthala and his family and is his absolute personal property. On behalf of defendant 2 there was no question or suggestion that the command was non-existing or that the defendant 3 had not seen the original command or that it was not signed by late Maharaja Paramjit Singh. The only cross-examination by defendant 2 with regard to this document was as follows:

'Q. In your affidavit which you have filed you have mentioned about a command dated 1st Feb., 1940 of the Ruler and issued on his behalf by the President State Council (this document is only a copy filed by the plaintiff and not the original) at page 219 of the plaintiff's document file. (Mark A).

A. The document referred to is a copy but I am not relying upon the document and instead am relying upon the document summoned and produced by me from the Punjab State Archives which is the same document.

Q. Can you show that document to the Court?

A. Yes. The document is at pages 19 and 21 of the Original file placed on the Court record by the Archives deptt. on receiving summons from this Court and exhibited in my affidavit as exhibit D3/W2/1.'

Q. Can you state who has written I the forwarding letter attached with the command exhibit D3/ W2/ 1, which is at page 2 1?

A. I can't say who has written this forwarding note but it is obviously an officer of the house-hold of Kapurthala State addressed to his superior.

Q. The document at page 21 exhibited by you as D3/ W2/ I is unsigned. Is it true?

A. It is correct.'

Another question which was asked was:

'Q. I put it to you that you in collusion with plaintiffs has given in the evidence about the factum of commands etc., to which you have no personal knowledge only because you don't have to return the money received as sale price of the property by your father.

A. It is wrong.'

On behalf of defendant I no specific question was put to defendant 3.

28. It seems to me that, in the cross-examination, suggestion was put to defendant 3 to the effect that he had no personal knowledge about the factum of commands. This suggestions was, of course, denied. It would, thereforee, not be correct to suggest that there was no cross-examination by defendant 2 of defendant 3 on the question of the existence of the command dt.1st Feb., 1940. Of course, if no question at all had been put to defendant 3 with regard to the existence of the said command then the plaintiff would be right in contending that the omission of cross-examining a witness on a material point must result in the acceptance of that witness's testimony on that point. Perhaps the cross-examination of defendant 3 on the question of existence of the command could have been more elaborate but it is not possible for me to come to the conclusion that defendant 3 has not been cross-examined on this question at all.

29. Even though suggestion had been put to defendant 3 that the command in question did not exist, it has still to be examined as to whether the testimony of defendant 3 with regard to the existence of the command can be accepted or not.

30. It has been contended on behalf of the plaintiff that defendant I suppressed the command dated 1st Feb., 1940. On 1 st June, 1964 the plaintiffs filed an application under O. 11, Rr. 12 and 14 as well as O. 12, R. 8 and S. 66 of the Evidence Act for discovery on oath of documents mentioned in the said application. One of the documents mentioned therein was the command dt.1st Feb., 1940. The application for discovery and production of the documents was allowed. Thereupon affidavit of one P. N. Nehru on behalf of defendant 2 was filed in which it was stated that the document in question, namely, command dt. 1-2-1940 was not in possession of defendant 2. It was further stated in the said

affidavit that on the plaintiffs own showing these documents had been submitted to the Government of India but the State of Punjab would make a search for the documents and if it is located, the same would be put into Court. In the affidavit dt.5th Sep., 1964 of P. S. Kacker it had been categorically stated 'that from the documents specified in list A furnished. by the plaintiff along with his application dt.1st June, 1964, I have in my possession and power the documents set forth in the first part of the first schedule hereto.' Item No. I of the first part of the first schedule referred to two documents, namely, the Aide Memoire dt.1st Mar., 1937 prepared by Lt. Col. Fisher and the Command dt.1st Feb., 1940, though in the Annexure the date given was 1-1-40. It was further stated in the affidavit of P. S. Kacker, who was the Assistant Director of Estates (Litigation), Government of India, Directorate of Estates, New Delhi, that they were willing to produce, inter alia, the aforesaid documents mentioned in item I of the First Schedule, First Part. With regard to documents mentioned in the Second Part Kacker claimed privilege and in the said affidavit, in the second Schedule, Kacker also mentioned the documents which were not available/ traceable.

31. It is clear from the aforesaid affidavit of P. S. Kacker that the list of documents which was sought to be produced was meticulously examined by Kacker and with regard to some documents, including the documents mentioned in item No. 1, namely. Aide Memoire dated 1st Mar., 1937 and the Command dt.1st Feb., 1940 defendant I had expressed its willingness to produce the said documents. Those documents which were not traceable or available were mentioned and with regard to some, privilege was claimed. After the filing of the said affidavit, on 5th Nov., 1964 summons were issued to defendant I to produce in Court on the next date of evidence the original Aide Memoire dt. 1st Mar., 1937 and the original Command dt.1st Feb., 1940. In the mean time Shri P. S. Kacker filed another affidavit dt.5th Oct., 1964. The stand which was now being taken by-defendant No. I was that it did not have the original of the Aide Memoire dt.1st Mar., 1937. In the first affidavit dt.5th Sept., 1964 Shri P. S. Kacker had admitted that he had in' his possession not only the Aide Memoire dt.1st Mar., 1937 but also the Command dated 1st Feb., 1940. In the fresh affidavit dt.5th Oct., 1964 it was stated by Kacker as follows:

'In clarification of item I of 1st Schedule referred to in my affidavit dt.5-9-1964, I have to state that the document referred to therein was a copy of paras 7 and 8 of the Aid-deMemoires. The attested copy of this, filed by defendant 1, was received from the Ministry of Home Affairs. It was at that time presumed that the original was in their possession. But on enquiry from them, it is learnt that the original is not in possession with the Ministry of Home Affairs and it is only copy of paras 7 and 8 which is in their possession.'

It is interesting to note that there is no mention made in this affidavit to the Command dt.1st Feb., 1940. The aforesaid item I of 1st Schedule referred to both the documents, namely, the Aide Memoire dt.1st Mar., 1937 and the Command dated 1st February, 1940. In the second affidavit of 5th Oct., 1964 Kacker categorically stated that defendant No. 1 did not have in its possession the original of the Aide Memoire dt. 1st Mar., 1937 but he did not make a similar correction or amendment to his earlier affidavit with regard to the command dt.1st Feb., 1940. It is only subsequently that L. P. Singh, the then Secretary to the Government of India, Ministry of Home Affairs in his affidavit dt.11th Dec., 1964 stated that 'Aid-de-Memoires in full, in original, dt.1-3-1937 with the original Command of His Highness the Maharaja of Kapurthala dt.1-2-1940 issued under the signatures of Tika Raja, the then President of the State Council is not in possession of the Union of India.'

32. On 23rd Feb., 1970 the plaintiff again filed an application, I.A. 249 of 1970, under O. 11, Rr. 12 and 14, O. 12, R. 8 and S. 151 of the Code of Civil Procedure and S. 66 of the Evidence Act stating that the defendants had not produced the documents which were in the possession of defendant 1 as per P. S. Kacker's affidavit dt.5th Sep., 1964. The plaintiff again prayed for discovery from defendant 1 of the documents in Annexure X to the application. The command dt.1st Feb., 1940 was mentioned at item I of the Annexure. A reply dt.30th Mar., 1970 was filed in which it was stated that 'Further the defendant submits that it has already filed all the documents at item Nos. 1, 2, 3, 4 and 5 Annexure X filed along with the present application, long ago as stated above'. On 14th Jan., 1971 the Court directed that in view of the aforesaid reply, no further orders were necessary on the aforesaid I.A. The plaintiff then moved an application, 1. A. 1571 of 1971,

under Ss. 123 and 124 of the Evidence Act read with O. 11, Rr. 12 and 14 and S. 151 stating that defendant I had not filed the command dt.1st Feb., 1940. In the reply dt.28th Oct., 1971 it was reiterated by the defendants that the documents in question including the document at item I of Annexure X of I.A. 249 of 1970 (command dt.1st Feb., 1940) had been filed long ago. Thereupon this Court ordered on 10th Nov., 1971 that the documents stated to have been filed should be flagged in order to ascertain whether they have been filed or not. Thereafter on 8th Feb., 1972 a reply was filed on behalf of defendant I in which it was stated that in the affidavit of L. P. Singh filed on 17th Oct., 1964 it had been submitted that the document(command dt.1-2-1940) was not in possession of the Union of India.

33. It has been contended by the learned counsel for the plaintiff that the command dt.1st Feb., 1940 was with defendant I and it has not been produced deliberately. It is submitted that the defendants knew that if the said command was produced, the same would go against its interest. It was contended that an adverse inference must be drawn against the said defendant for not producing the command.

34. It is no doubt true that L. P. Singh in his affidavit dt.11th Dec., 1964 has stated that the original command dt.1-2-40 is not in possession of the Union of India but in the said affidavit it is not stated that the said command was never in their possession. Kacker in his affidavit of 5th Sept., 1964 categorically stated that the documents in item I were in the possession of Union of India and could be produced. There were two documents mentioned in the said item No. I and they were the Aide Memoire dt.1st Mar. 1937 and the Command dt.1st Feb., 1940 Subsequently, Kacker himself clarified when he filed another affidavit of 5th Oct.: 1964, that the Union of India only had some extracts of the Aide Memoire dt.1st Mar., 1937 and not the original. At this stage if the Union of India did not have the command dt.1st Feb., 1940, one would have expected Kacker to state at least on that day that the Union of India did not have the command dt.1st Feb., 1940 in its possession. Subsequently, it is only L. P. Singh who has stated that defendant I does not have the command dt.1st Feb., 1940 in its possession but there is no such affidavit coming forth for P. S. Kacker. It is Kacker who had originally, in his affidavit dt.5th Sept., 1964, segregated the documents into three different

categories. The first category pertained to those documents which, according to Kacker, could be produced in Court and this included the command dt.1st Feb., 1940. The second category was with regard to those documents for which privilege was claimed and in respect of the third category it was stated that the said documents were not available/ traceable. It appears to me that Kacker must have applied his mind, inspected the Government records and then sworn the affidavit to the effect that the documents at item I were available. It is possible that with regard to Aide Memoire dt. 1st Mar., 1937 a mistake may have been committed and this was clarified by Kacker himself in the subsequent affidavit dt.5th Oct., 1964. Kacker, however, did not make any such clarification or retraction or amendment to his earlier affidavit with regard to the command dt.1st Feb., 1940. It is not inconceivable, therefore, that the command of 1st Feb., 1940 may have been in existence on the files of defendant No. 1, at least till 5th Oct., 1964, when the second affidavit of Kacker was filed, but may not have been there when L. P. Singh filed his affidavit in Dec., 1964.

35. From the aforesaid discussion the only conclusion which can follow is that the defendant, as was evident from the affidavit of P. S. Kacker dt.5th Sept., 1964, did have the original command dt.1-2-1940 in their possession and the same was not produced by the said defendant. In other words, the existence of the command dt.1st Feb., 1940 stood proved by the said affidavit dt.5th Sept., 1964 of P. S. Kacker and the same was duly -corroborated by the evidence of defendant 3 who had categorically stated that he had seen the original command bearing the signatures of his father.

36. It was submitted on behalf of defendant 2 that what has been produced on record is an unsigned copy of a command dt.1-2-1940. It is contended that in the plaint the date of the command is stated to be 1-1- 1940 and no one has stated that this is an error and in fact the command is dt.1-2-1940. Further contention which has been raised is that the document was summoned from the Archives of the State of Punjab. The said document had a forwarding note dt.4th Mar., 1948 signed by somebody from the household of the Maharaja in which it was stated that the Command dt.1-2-40 was being forwarded. According to defendant 2, no witness was brought by the plaintiff or by defendant 3 to explain as to who was this

person who wrote the forwarding note and there was no proof as to when the unsigned command came in the records of the Archives. It was also submitted that when the record was brought from the Archives Department, an objection was raised by the counsel for defendant 2 to the placing of the said document on record. The counsel for defendant 3 had, undertaken to move an application under O. 13, R. 2 for production of this document. No such application was filed and, therefore, the said document could not be brought on record.

37. in my opinion, there is no merit in these submissions. Firstly with regard to the date of the Command, it is no doubt true that in the plaint it has been stated that on 1st Jan., 1940 a Command was issued under the signatures of Tika Raja, President State Council. The plaint also sets out the text of the Command. What has been produced from the State Archives is a Command dt.1st Feb ' 1940 and the language of that is identical to what has been quoted in the plaint. It was submitted before me that there is obviously a typographical error in the plaint when the Command was shown as being dt.1- 1 -40. Be that as it may, the evidence of defendant 3 clearly was that the Tika Raja,'President State Council had issued, under instructions of the Maharaja, the Command dt.1-2-40. The said witness was not cross-examined on the alleged discrepancy of the date of the Command. In fact the cross-examination proceeds on the assumption that the Command which was relied upon by the plaintiffs was dt.1st Feb., 1940. The copy of the Command which has been placed on record does not bear any one's signatures, though it is a typed copy. Ordinarily an unsigned copy would not be admissible in evidence but in the present case because of the provisions of Ss. 63 and 65 of the Evidence - Act, this secondary evidence is clearly admissible. I have already held that the affidavit which had been filed by P. S. Kacker showed that the original of this Command dt.1-2-40 was with the Union of India. This document was not produced. Under Section 65 of the Evidence Act if it is shown that the original of a document is in the possession or power of a person against whom the document is sought to be proved and the said person does not produce the same, then secondary evidence can be led. In the present case, as the original document has not been produced, despite P. S. Kacker having stated in his affidavit that the same was in possession of the Union of India, secondary evidence could be led. The unsigned carbon copy has been summoned from the State Archives and the

same has been proved by defendant 3 himself. He has also deposed that he had seen the original of the said Command and there is no reason for me to disbelieve this statement. There could be no valid objection to the summoning of the files from the Punjab Archives for producing the document which was on their record. It is true that there is no evidence on record to show as to when the document in question was placed in the records of the Archives. It is, however, difficult to accept that because the plaintiff has not been able to show as to when the said document got into the custody of Punjab Archives, therefore the same should not be taken in evidence. It has been deposed by defendant 3 that the record was taken into custody by the Archives Department. The said Department was under the control of defendant 2 and it is the said defendant which ought to have led evidence to show as to when the document in question got on to their record. The record was in the custody of the Punjab Archives and they must be regarded as being in the best position to depose as to when the document came into their custody. Non-production of the witness for proving the forwarding note is of no consequence. The said note is dt.4th Mar., 1948. No reliance is being placed on the same by the plaintiff and, therefore, it was not necessary to prove as to who was the author of the said note.

38. This brings me to the next question as to whether the Command of 1st Feb., 1940 had the force of law and was covered by Art. 372 of the Constitution. In this regard, reference may usefully be made to the decision of the Supreme Court in the case of Madhaurao Phalke v. State of Madhya Bharat : [1961]1SCR957 in which it was, inter alia, observed as follows: (Paras 11 and 12)

'In dealing with the question as to whether the orders issued by such an absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive and his orders, however, issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its

citizens. In *Ameer-un-Nissa, Begum v. Mahboob Begum* : AIR 1955 SC352 , this Court had to deal with the effect of a Firman issued by the Nizam, and it observed that so long as the particular Firman, issued by the Nizam held the field that alone would govern and regulate the rights of the parties concerned though it be annulled or modified by a later Firman at any time that the Nizam willed. What was held about the Firman issued by the Nizam, would be equally true about all effective orders issued by the Ruler of Gwalior (vide also: *Director of Endowments, Govt. of Hyderabad v. Akram Ali, (S)* : AIR 1956 SC60).

'It is also clear that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Art. 372 of the Constitution. Art. 372 provides for the continuance in force of the existing laws which were in force in the territories of India immediately before the commencement of the Constitution, and Art. 365(l) defines an existing law, inter alia, as meaning any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having a power to make such law, ordinance, order, rule or regulation. In *Edward Mills Co. Ltd. Beawar v. State of Ajmer* : (1954)11LLJ686SC , this Court has held that 'there is not any material difference between the expressions 'existing law', and the 'law in force' ' The definition of an existing law in Art. 365(10) as well as the definition of an Indian law contained in S. 3(29) of the General Clauses Act make this position clear.' thereforee, even if it is held that the Kalambandis in question did not amount to a quantum or ' law technically so called, they would nevertheless be orders or regulations which had the force of law in the State of Gwalior at the material time, and would be saved under Art. 372. The question which then arises is whether these Kalambandis were regulations having the force of law at the material time.'

From the aforesaid, it will follow that the Command of 1st Feb., 1940 which was issued had the force of law in the State of Kapurthala and would be saved by Art. 372 of the Constitution.

39. It has also been contended that, in addition to the Command of 1st Feb., 1940, the Maharaja had also issued a Command dt.11th Aug., 1948 declaring the Property in question to be his private property. This Command which is Ex. D3W2/

2 is as follows:

'In full possession of my senses I do hereby verify and declare that the property known as the Kapurthala House, 3, Man Singh Road, New Delhi with all dependencies and annexes is my private and personal property. I have full powers of disposition and transfer over it. I have enjoyed it since its purchase as such. This property would descend to my heirs and successors as their private and personal property.'

The submission on behalf of the plaintiffs is that on 11th Aug., 1948 the Maharaja was an absolute sovereign and could enact any law as on that day and, therefore, the declaration of 11th Aug., 1948 should be regarded as being a law which is subject to the protection under Art. 372 of the Constitution.

40. On behalf of the defendants, it has been contended that the Maharaja had lost the sovereign status to enact a law by 11 the Aug., 1948 and, secondly, the declaration dated 11 the Aug., 1948 was merely a grant or a gift by the ruler of Kapurthala to himself and it was neither a command nor order or law of a sovereign.

41. On 5th May, 1948 a number of rulers, including the Maharaja of Kapurthala, entered into a merger agreement, hereinafter referred to as the covenant. Under Cl. VI of the covenant the rulers were to hand over the administration of their respective States to the Raj Parmukh as soon as possible, but not later than 20th Aug., 1948. According to the defendants all the powers were to be exercised by the Raj Parmukh and it was he who was to execute instrument of accession. The further case of the defendants is that the Union (PEPSU) was inaugurated on 15th July, 1948 and under Cl.III(6) of the Covenant the Administration of the States stood transferred to the Raj Parmukh. According to the defendants, even though the State might have come into existence subsequently, it is only the Raj Parmukh who, after 15th July, 1948, could exercise the powers of administration. It is further the case of the defendants that instrument of accession was executed by the Raj Parmukh on 7th Aug., 1948 and the Raj Parmukh could not have exercised this power if the rulers had not divested themselves of their respective powers in his favor. It is not necessary to deal with the aforesaid contentions of defendant 2 in

any great detail because the Supreme Court in the case of Lachhman Dass v. State of Punjab : [1963]2SCR353 had occasion to deal with the question as to when the legislative powers of the erstwhile rulers of the independent States of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh came to an end with the formation of the new State of PEPSU. The Supreme Court observed in that case that loss of sovereignty might be a continuing process extending over a considerable period of time but, dealing specifically with the covenant dt.5th May, 1948, which was signed by the aforesaid rulers, which led to the formation of the State of PEPSU, the Court observed as follows: (at Pp. 229-30)

'The Covenant is quite clear and unequivocal on the point. Article VI is the crucial provision, and it says that all the rights, authority and jurisdiction of the Ruler in relation to Government are to vest in the Union. Then follow provisions for the exercise of those powers by the Union. Thus there is on the one hand an extinction of the powers of the Rulers, and on the other hand vesting of the same in the new State, In strong contrast to this are the provisions which guarantee to the Rulers their privy purse, and their right to their personal properties, and privileges. On the wording of the Covenant therefore there was a complete divestiture of all the sovereign rights of the Rulers, when the new State came into existence on Aug. 20, 1948.' .

It is clear from the aforesaid that the rights of the erstwhile rulers to make laws in respect of their respective States came to an end only on 20th Aug., 1948. In this connection, another fact which may be taken note of is that the instrument. of accession was accepted by the Governor General of India only on 13th Sept., 1948. According to S. 6 of the [Government of India Act, 1935](#) an Indian State shall be deemed to have acceded to the dominion after the Governor General has signified his acceptance on the instrument of accession. As this was done on 13th Sept., 1948 there is some support for the contention of the plaintiff that on 11th Aug., 1948 the Maharaja could legislate in respect of the State of Kapurthala.

42. Even though the Maharaja may have been competent to enact the law on 11th Aug., 1948, in respect of his State, I am unable to come to the conclusion that the

document executed by him on 11th Aug., 1948 amounts to enactment of a law. According to the defendants, the said document is nothing more than a grant by the ruler to himself and relying upon *State of Gujarat v. Vora Fiddali*, : [1964]6SCR461 it has been contended that a grant is not a law. The wordings of the document, however, seem to suggest that the same is nothing more than verification or declaration, by the Maharaja, of the existing State of affairs with regard to the property in question. The said document seems nothing more than being a reiteration of the powers of disposition and transfer which the Maharaja claimed, over the said property. This is evident from the fact that it is stated by him that he verifies and declares the said property as being his private and personal property. Furthermore, when it is stated that 'I have full powers of disposition and transfer over it. I have enjoyed it since its purchase as such', this shows that he was referring to the existing status of the property as on 11th Aug., 1948. By this document no transfer or grant of the property to him was intended. The document would have been regarded as a grant if it purported to transfer to him personally property which had, belonged to the State. The document, on the contrary, does not indicate that the Maharaja regarded this property as having been owned by the State and, therefore, there was no question of the same being regarded as a grant to himself. At the same time, the said document does not have any trappings of a law. It is not of any general application, it does not seem to have been referred to the State Council and, in any case, the language does not suggest that it was meant to be an enactment of law. The plaintiff, therefore, cannot rely on this document for any purpose other than showing that it was a declaration made by the Maharaja of Kapurthala at that point of time.

43. The aforesaid declaration of 11th Aug., 1948 is, however,. relevant in another connection. It has been submitted by the learned counsel for the defendants that: the documents of 1st Feb., 1940 and 11th August, 1948 were never acted upon. It was submitted that when the matter was under consideration with the Government of India as to whether the said property was property of the State or the personal property of the Maharaja it had never been contended before the Government that by virtue of the said documents dt.1-2-40 and 11-8-48 the property in question should be regarded as the personal property.

44. I have already held that the document of 11th Aug., 1948 is neither a grant nor law but was merely a declaration. This declaration of 11th -August, 1948 certainly supports the command of 1st Feb., 1940. It has been categorically stated in this declaration of 11th Aug., 1948 that he has enjoyed this house since its purchase as his private and personal property. There is no evidence on the record to show that the property has not been used by the Maharaja as his private and personal property. The document of 11th Aug., 1948 evidences the use to which the said property was put. Even though the documents of 1st Feb., 1940 and 11th Aug., 1948 may not specifically have been brought to the notice of the Government of India by the Maharaja of Kapurthala when the Government was considering whether the property was private or State property, the position in law, with regard to the ownership of the property, would not change. The Command of 1st Feb., 1940 was issued, the said command was law and by virtue of the provisions of Art. 372 of the Constitution the said law would continue to apply even after the merger of the State of Kapurthala in the Union of India.

45. The evidence of defendant 3 also shows that the Kapurthala House at New Delhi was being used by the Maharaja as his personal property. It has been deposed by defendant 3, in his evidence, that the Ruler of Kapurthala was paying all charges and was incurring all expenses including salaries of employees, gardening charges, municipal taxes, ground rent, water and electricity bills etc. and the suit property. In support thereof, the witness proved Exs. CP/ 1 to C.P. 1/42 which showed that at least in the years 1948-49 the payment in respect of the aforesaid amounts was being made from the household account of the Maharaja. The said defendant 3 was not cross-examined with regard to any of these documents either by defendant 1 or by defendant 2. Furthermore, it was deposed by defendant 3 that 'the suit property was the exclusive property of the Ruler of Kapurthala, namely, my grandfather, who used it for his personal residence and residence of members of the family and no one else. No State or official guest stayed or was required to stay in the said property.' It is pertinent to notice that there was no cross-examination of the witness on this point either by defendant 1 or by defendant 2. This evidence would, therefore, lend support to the contention of the learned counsel for the plaintiff that the command of 1st Feb., 1940 was given effect to and was acted upon as the said property was always regarded by the

Maharaja of Kapurthala as his personal property.

46, With regard to the question as to whether Maharaja Paramjit Singh sold the property in question to the plaintiff and Dewan Jarmani Dass, the said sale is sought to be proved by sale deed Ex. P-10 and the evidence of Vishwa Nath, P.W. 5. The sale in favor of 'Seksaria and Dewan Jarmani Dass is also proved by the testimony of Sushila Jarmani Dass, P.W. 11. The said sale deed dt. 10th Jan., 1950 was registered before the Registrar of Delhi on 13th Jan., 1960. Subsequently, by Indenture of Transfer dt. 21st Feb., 1951, Ex. P. W. 11 / G, Jarmani Dass transferred his interest in favor of R. M. Seksaria. This deed of transfer has been proved by P.W. 1 and is also taken note of by the defendants. The case of defendants 1 and 2, however, is that the said transfers are illegal because Maharaja Paramjit Singh had no authority to sell the property in question. According to the said defendants, at the time of the alleged transfer by the Maharaja, the Government of India had yet to decide whether the property in question belonged to the Maharaja in his individual capacity or had belonged to the State of Kapurthala. Furthermore, the decision of the Government of India was that the said property was declared to be the State property and as such had vested in the State of Pepsu and thereafter in the State of Punjab by reason of which Maharaja Paramjit Singh could not have transferred the property in question on 10th Jan., 1950 in favor of any one.

47. I have already come to the conclusion that initially, on purchase, and thereafter after 1st Feb., 1940, by virtue of the Command of that date, the said property belonged to the Maharaja in his personal capacity. The Command dt. 1st Feb., 1940 was existing law which had the protection of Art. 372 of the Constitution and there could be no question of the Government taking any decision whether to regard this property as State property or not because as per the said law the property was that of the Maharaja in his individual capacity. It is pertinent to note that the defendants have not disputed the existence or the execution of the sale deed by Maharaja Paramjit Singh and subsequent Deed of Indenture by Jarmani Dass but, as already noted, their contention is that Maharaja Paramjit Singh and, consequently, Jarmani Dass had no jurisdiction or authority to deal with this property as it was State Property.

48. The onus of proving that Jarmani Dass was added in the sale deed executed by Maharaja Paramjit Singh with his collusion and also the collusion of the plaintiff was on defendants 1 and 2. There is no evidence on record, however, which can persuade me to come to the conclusion that the name of Jarmani Dass was collusively added to the sale deed for some ulterior purpose. Even if the name of Jarmani Dass was collusively added to the sale deed that would make no difference to the outcome of this case. What is important and material is as to whether Maharaja Paramjit Singh had the right or the authority to sell the property in question. It is wholly immaterial as to whom the property was sold. therefore, adding Jarmani Dass as a vendee is of no consequence. It is an admitted case of the parties that Jarmani Dass has subsequently transferred his interest in favor of the plaintiff and thereafter he ceased to have any interest in the said property.

Issues 1 to 3 are accordingly decided in the aforesaid terms.

Issue Nos. 4, 4A and 4B

49. According to the defendants it was for the Government of India to declare as to whether the property in dispute was the private property of the erstwhile ruler or not. Maharaja Jagatjit Singh had represented to the Government of India that the property in question was his private property. The submission was that this question had to be decided by the Government of India and the declaration so made was to be final and binding on all concerned.

50. I have already held that by virtue of the Command dt. 1st Feb., 1940 this property was declared to be the private property of the Maharaja. This Command was law and, therefore, protected and continued under Art. 372- of the Constitution and as such the question of the Government having any right to declare the said property as private property did not exist. Assuming, however, that the Command of 1st Feb., 1940 did not vest the property with the ruler and the question had still to be decided by the Central Government, it has to be considered as to whether any such decision had been taken in accordance with law.

51. Defendant 2 in his written statement has, inter alia, stated that the States Ministry of the Government of India considered the question and declared the Kapurthala House, New Delhi as the State Property of PEPSU in the year 1951 as per its letter dated 5th Mar., 1951 read with letter dt.5th May, 1951.

52. The letter of 5th Mar., 1951 (Ex.D2W2/1) was written by Shri Hari Sharma, Deputy Secretary to the Government of India in the Ministry of States, to Mr. M. R. Bhide, Regional Commissioner, Pepsu. It was stated in this letter that a note regarding the discussions which were held with the Maharaja of Kapurthala on 26th Feb., 1951 was enclosed. The said note purports to be the minutes of discussion held between the Secretary in the Ministry of States and the Maharaja of Kapurthala on 26th Feb., 1951. A number of decisions stated to have been taken are recorded therein and with regard to the Delhi House the note is as follows:

'His Highness was informed that on the basis of the information received from him, the house could not be treated as private property. The intention of the Government of India, therefore, was to treat the house as State Property.'

This note appears to be conveying the intention of the Government and not its final decision. The note which has been produced in evidence has not been signed by any one and, in any case, it has to be seen, and this question will be examined presently, whether the alleged decision could be regarded as a decision of the Government of India. The fact that the aforesaid note cannot be regarded as a decision of the Government of India to regard the property as State property is evident from the evidence of Hari Sharma D2W2. When asked whether he could tell if there was any order on the file declaring the property as State property, he answered that 'I had not seen such an order because I left the States Ministry on 10th Mar., 1951 and the decision regarding this took sometime in May, 1951. ' It is clear from the aforesaid that even Hari Sharma, who was the author of the letter dt.5th Mar., 1951, did not regard the said note as containing a decision whereby the Government had finally decided that the property in question was State property.

53. Letter dt.5th May, 1951, was written by V. Shankar, Secretary to the Government of India in the Ministry of States, to the Maharaja and was in the following terms:

'It has now been decided that Kapurthala House, No. 3, Mansingh Road, New Delhi, will be State property and not the private property of your Highness. We have informed the Pepsu Government of this decision.'

Reference may, at this stage, be made to a note dt.17th April, 1951 contained in the file of the Government of India which was produced in Court in which it is noted as follows:

'We may formally recognise Kapurthala House in Delhi as State Property.'

This note is signed by M. N. Buch, who was an officer of the Government of India and V. Shankar, who was the Secretary in the Ministry of States. It is only after recording the aforesaid note dt.17th April,1951,that the aforesaid letter of 5th May, 1951 was issued.

54. Apart from the letter of 5th May, 1951 there does not appear to be any document whereby the Maharaja was conveyed the decision to regard the Kapurthala House at New Delhi as the State Property. The decision, pursuant to which the aforesaid letter of 5th May, 1951 was issued, appears to have been taken in the file on 17th April, 1951.

55. The contention of the learned counsel for the plaintiffs is that the aforesaid declaration does not comply with the provisions of Art. 77 of the Constitution and, further, it has not been shown that M. N. Buch or V. Shankar had any, authority to bind the Government or to take such a decision.

56. Under Art. 77 of the Constitution, all actions have to be taken by the Government of India in the name of the President of India. If a letter is issued or a decision conveyed which is duly authenticated in the name of the President, then the provisions of Art. 77 are regarded as having been complied with and no further investigation shall ordinarily take place. The provisions of Art. 77 are, however, not mandatory and even if a decision has not been purported to have been conveyed

or taken in the name of the President it can still be shown or proved that the person taking the decision was duly empowered to do so.

57. Article 77(3) enables the President to make rules for the more convenient transactions and the business of the Government of India and for allocation amongst Ministries of the said business. It has been held by the Supreme Court that the provisions of Art. 166, which are in pari materia to the provisions of Art. 77, are only directory and it is open to the Government to establish as a question of fact that an order has been issued by the State Government. (See *State of Rajasthan v. Sripal Jain*, : 1963 CriLJ347 and *L. G. Chaudhary v. Secretary, L.S.G. Dept., Govt. of Bihar* : AIR 1980 SC383). The defendant, therefore, ought to have brought evidence on record to show that V. Shankar or M. N. Buch had been duly authorised to take a decision on behalf of the Government of India. This could have been done by putting on record allocations of business rules and transactions of business rules which might have been framed by the President under Art. 77(3) of the Constitution. No such evidence has been brought on record. In the absence of such evidence, it cannot be concluded that V. Shankar or M. N. Buch had the authority to decide the question as to whether the property was to be declared as State property or not. This decision had to be of the Government of India and the decision had to be expressed in the name of the President, according to Art. 77 of the Constitution, or should have been proved to have been taken by a person who had been duly empowered to do so. In the absence of any such evidence the only conclusion which can be arrived at is that there was no valid declaration of the property as being State property of the erstwhile State of Pepsu.

58. It was also contended by the learned counsel for the plaintiff that, in any case, in view of the fact that the property in question was situated outside the State of Kapurthala, the Government of India had no jurisdiction, at least after 26th Jan., 1950, to declare the property in question as State property by an executive decision. This contention will be dealt with when I consider whether the said declaration constitutes as an act of State or not. However, assuming that such a declaration could be made, it has to be seen whether the principles of natural justice have been complied with or not.

59. It was submitted by the plaintiff that the declaration was made behind the back of R. M. Seksaria and no hearing was given to him. According to the plaintiff, negotiation was going on between the Government of India and R. M. Seksaria and Dewan Jarmani Dass for the purchase of the property in question and, as such, a decision with regard to treating the said house as State property could not have been arrived at without giving a notice of hearing to the plaintiff.

60. In my opinion, there is no force in this contention. The plaintiff had merely stepped into the shoes of Maharaja of Kapurthala. As far as the Government of India is concerned the issue as to whether the said house was his personal property or the State property had not been settled even at the time of sale of the said property to the plaintiff. The question with regard to the status of the property had arisen at the time of accession of the State of Kapurthala to the Union of India. At that time it was the Maharaja of Kapurthala who was claiming ownership rights and he had represented to the Government of India that the house was his personal property. There is evidence on record to show that the Maharaja had also had discussions with the officers of the Government of India, in this connection, and, therefore, it can be safely presumed that the Maharaja of Kapurthala had been given more than adequate opportunity of representing his case. It is no doubt true that at the time when the declaration was purported to have been made, the property had changed hands and the plaintiff had become the owner. The Government was considering the right, title and interest, in the property, of the vendor, namely, the Maharaja of Kapurthala and that vendor had been heard. In my opinion, it was not necessary to give any further hearing to the plaintiff who had, as already observed, merely taken over all the rights and liabilities of the Maharaja in respect to the property in question.

61. In view of the aforesaid, it follows that issues 4, 4A are decided in favor of the plaintiff while issue No.4B is decided in favor of the defendants but the decision of this issue had no effect on the final outcome of the case.

Issue Nos.5 to 7

62. It is the case of the defendants that the integration of the Indian States with the dominion of India is an act of State. An act of State, is the exercise of the sovereign

powers against an alien and it comes to an end only when the new sovereign recognises, expressly or impliedly, the rights of the erstwhile aliens. The declaration, by the Union of India about the rights 'of the rulers declaring certain properties as being State properties was an act of State and the civil courts have no jurisdiction to adjudicate the rights which are claimed by the plaintiff because of the act of State. In other words, an act of State, qua an alien, cannot be challenged in a Municipal Court. It is also contended that Art. 363 of the Constitution also constitutes a bar to the Courts of law dealing with or considering any disputes under any covenant or agreement between the Ruler and the State.

63. The defendants have relied upon *State of Seraikella v. Union of India*, : [1951]2SCR474 which was a case where the State of Seraikella in Orissa had acceded to the dominion of India. The Administration of the State by the Government of Orissa was challenged in a suit which was filed in which it was contended that the figure in Art. 2 where a provision for privy purse was made in a clause had been left blank. The Supreme Court held that the dispute was in respect of the instrument of accession and it was covered by Art. 363 of the Constitution. The said Article clearly debarred the Court from considering the said dispute. Likewise it is contended, the decision of the Union of India to regard the property as being State, property arises out of the accession of the State of Kapurthala to the dominion of India and this decision cannot be challenged because of the bar created by Art. 363 of the Constitution.

64. The concept of act of State was in fact very lucidly explained by the Privy Council in AIR 1924 PC 216 as follows: (at P. 217)

'But a summary of the matter is this when a territory is acquired by a sovereign State for the first time, that is an act of state, it matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it . may be by occupation of territory hitherto unoccupied by a recognised ruler.

In all cases, the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has through his officers recognised. Such rights as he had under the

rule of predecessor avail him nothing. Nay more, even if it, is a treaty of cession, it is stipulated that certain inhabitants should enjoy certain rights that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties.'

The plaintiffs, it is submitted by the defendants were not parties to the covenant. The decision of the Government of India to declare the property in question as State property is based on the covenant and this decision cannot be assailed by the plaintiffs because of the bar created by Art. 363 of the, Constitution. Reference is also made to the other cases, including *State of Gujarat v. Vora Fiddali* : [1964]6SCR461 , in which it was held that the rights in properties created prior to the integration necessarily required recognition by the new sovereign and the decision of the new sovereign,- to accept those rights or not to recognise those rights as an act of State which cannot be enforced in the municipal courts because of the embargo placed by Art. 363 of the Constitution. The Court followed its earlier decision in the case of *Promod Chandra Deb v. State of Orissa* : AIR 1962 SC1288 wherein it had reviewed the decisions on this point and the propositions laid down in them were examined and summarised by the Court as follows: (Para 18)

'(1) 'Act of State' is the taking over of sovereign power by a State in respect of territory which was not till then a part of its territory, either by conquest, treaty or cession, or otherwise, and may be said to have taken place on a particular date, if there is a proclamation or other public declaration of such taking over.

(2) But the taking over of full sovereign powers may be spread over a number of years, as a result of a historical process.

(3) Sovereign power, including the rights to legislate for that territory and to administer it, may be acquired without the territory itself merging in the new State, as illustrated in the case of *Dattatraya Krishna Rao v. Secy. of State* .

'(4) Where the territory has not become a part of the State the necessary authority to legislate in respect of that territory may be obtained by a legislation of the nature of Foreign Jurisdiction Act.

(5) As an Act of State derives its authority not from a municipal law but from ultra legal or supra legal means, Municipal Courts have no power to examine the propriety or legality of an act which comes within the ambit of Act of State'.

(6) Whether the Act of State has reference to public rights or to private rights, the result is the same, namely, that it is beyond, the jurisdiction of Municipal Courts to investigate the rights and wrongs of the transaction and to pronounce upon them and, that therefore, such a Court cannot enforce the decisions, if any. It may be that the presumption is that the pre-existing laws of the newly acquired territory continue, and that according to ordinary principles of International Law private property of the citizens is respected by the new sovereign, but Municipal Courts have no jurisdiction to enforce such international obligations.

(7) Similarly, by virtue. of the treaty by which the new territory has been acquired it may have been stipulated that the pre-cession rights of old inhabitants shall be respected, but such stipulations cannot be enforced by individual citizens because they are no parties to those stipulations.

(8) The Municipal Courts recognised by the new, sovereign have the power and the jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge by legislation, agreement or otherwise.

(9) Such an agreement or recognition may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights by the new sovereign. Hence, the Municipal Courts have the jurisdiction to find out whether the new sovereign has or has not recognised or acknowledged the rights in question, either expressly or by implication, as aforesaid.

(10) In any controversy as to the existence of the right claimed against the new, sovereign, the burden of proof lies on the claimant to establish that the new sovereign had recognised or acknowledged the right in question.'

65. In *Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India* : [1971]3SCR9 the question which arose was whether the order of the President withdrawing privy purses to the erstwhile rulers could be regarded as an Act of State. It was held that

an Act of State comes to an end when the new sovereign recognises, either expressly or by implications, the rights flowing there from. Relying upon this, it is sought to be contended that the decision of the Government, to treat the Kapurthala House as State Property, is an Act of State and the same decision cannot be challenged because of the embargo placed by Art. 363 of the Constitution. The last case relied upon for this proposition is that of *Sawai Tej Singhji v. Union of India* : [1979]2SCR62 where the erstwhile ruler of a State had filed the suit against the Government seeking compensation with regard to the properties which were being used and occupied by the Government but some of which had earlier been declared as private properties and other as State properties. The Supreme Court held that the question whether a particular property was a State property or private property was an Act of State and the same could not be challenged because of Art. 363 of the Constitution.

66. The contention of the plaintiff, however, is that whether there could be an Act of State with regard to the property in question or not is a question which can be agitated and is not barred by Art. 363 of the Constitution. The submission is that the property in question was not situated in the State of Kapurthala, which was alien territory, but was situated in India and, therefore, there could be no Act of State with regard to property within the territory of India. It is also submitted that after 26th Jan., 1950 the erstwhile ruler of Kapurthala as well as the plaintiff had become citizens of India and, it is now well settled, that there can be no Act of State in respect of one's own citizens.

67. The property being immovable property, the same has to be governed by the Rule of Lex Situs. The immovable property was situated in the territory of India though it was owned by a foreign national, namely, the Maharaja of Kapurthala. As far as the property is concerned, it stood in the name of Maharaja Jagatjit Singh in the records of the Land and Development Office, which was the Lesser of the land under the suit property. It is a well recognised principle of international law that immovable properties, in general, are governed by Lex Situs. The law which is applicable with regard to the acquisition and transfer of immovable property is the law of the country or the State in which the immovable property is situate. The nationality of the owner of the property is of no consequence. Chesire in his book

on Private International Law has dealt with this question in relation to immovable properties. Relying upon various decisions, including the cases of *Bank of Africa Ltd. v. Cohen* (1909) 2 Ch 129; *Duke of Wellington v. Glentanar* (1947) 2 All ER 854, *Lawrence v. Kitson* (1916) 2 Ch 206; *Reiner v. Marquis of Salisbury* (1876) 2 Ch D 378, *Duncan v. Lawson* (1889) 41 Ch D 394, *Companhia De Mocambique v. British South Africa Company* (1892) 2 QB 358, *Philipson-Stow v. Inland Revenue Commr.* (1961) AC 727, it has been concluded that right in an immovable property can be created only according to the law of the land where the property is situated. Even in cases of inheritance of immovable property the devolution of the immovable properties is governed by the law of the State in which the property is situated. Dealing with the question of essential validity of transfers, reference may usefully be made to the following passage from Chesire's book, Chapter XVI:

'The general rule laid down in *Nelson v. Bridport*, as we have already seen, is that no disposition, though made in a country where it may be regular, can create an interest in immovables that is contrary to the *lex situs*. The *lex situs* obviously must decide whether an interest in land is permissible in nature or extent. That law governs exclusively the tenure, title and descent of immovables. Although it is a general principle that a legal title duly acquired in one country is a good title all the world over, yet, where the title concerns immovables, it must conform to the *lex situs*.'

'Thirdly, in relation to the extent of the interest to be taken or transferred. And here there seems a perfect coincidence between the doctrine of the common law and that maintained by foreign jurists. It is universally agreed that the *law rei sitae* is to prevail, in relation to all dispositions of immovable property, and the nature and extent of the interest to be alienated.'

'Thus a disposition of English land, whether by will or otherwise, which contains limitations that infringe the *Perpetuities and Accumulation Act* is void.

A common application of the general principle occurs in the case of those restraints upon alienation which are found in most systems of jurisprudence. Prohibitions against alienation between certain persons, or for certain purposes or beyond a

certain amount, are frequently met with, and in fact most of the Continental systems of law forbid testators to dispose of more than a certain proportion of their property. When the subject-matter of alienation is an immovable the application of such restraints depends solely upon the *lex situs*.'

68. The position of law in England, therefore, clearly is that question relating to transfer of immovable property is decided by the law of the country in which the immovable property exists. Even if there are any restraints which are placed on the alienation or transfer of the property, the applicability of the said restraints will be governed by the rule of *lex situs*,

69. This being so, the question which arises is whether there can be an Act of State with regard to property in India which, by an executive action, seeks to deprive the registered owner of the property of his title.

70. The property had all along been governed by the provisions of the Transfer of Property Act and the Registration Act. When the Maharaja of Kapurthala purchased the property from his Prime Minister, the transfer had to be effected in accordance with the provisions of law prevailing in India. It is for this reason that a written sale deed had to be executed on which requisite stamp duty had been paid and transfer registered under the Indian Registration Act. As far as the law in India is concerned, the property was owned by the Maharaja of Kapurthala.

71. According to the provisions of the Transfer of Property Act, applicable in India, no immovable property of a value of more than hundred rupees can be transferred except by a written sale deed which is duly registered. The Transfer of Property Act no doubt deals with cases of voluntary transfer but then no compulsory acquisition or transfer vesting of a property situated in India can take place merely by an executive order or decision. Transfer of immovable property, situated in India, can only take place in accordance with the provisions of relevant laws applicable in India. As law relating to transfer of property exists in India, no transfer can take place merely on an administrative or executive decision taken by the Government which is not warranted by such law.

72. Even the property in India of persons, who had become aliens or enemies, as a result of an Act of State, cannot be acquired by the State by an executive action. It has always been thought necessary that statutory provision has to be made whereby power is given to the Government to take control of such property.

73. Legislative history in India would show that whenever the need has arisen necessary enactment or ordinance has been enacted, which is in the nature of a special law which makes provisions as to the manner in which immovable property in India of aliens has to be dealt with. In recent times, the first such enactment was the Administration of Evacuee Property Ordinance, XXVII of 1949. S. 6 of the said Ordinance provided that any property declared to be an evacuee property shall vest in the Custodian. Thereafter, the Administration of Evacuee Property Act, 1950 was enacted. S. 8 of which provided for vesting of evacuee property in the Custodian. Evacuees were those persons who had, inter alia, migrated from India as a result of the partition of the country. It became necessary to have such an enactment because, otherwise, the immovable properties which were in India, but belonged to persons who had migrated to Pakistan, could not have been dealt with by any one except the owners of the said properties.

74. Again in 1962, consequent upon Chinese aggression, a state of emergency was proclaimed and defense of India Act and the Rules were promulgated. The said Rules, apart from other matters, provided for vesting of enemy property in the Custodian of Enemy Property for India appointed under the defense of India Rules, 1962. Similarly, consequent upon the aggression by Pakistan in 1965, immovable and some specified movable properties in India belonging to Pakistani nationals were vested in the Custodian of Evacuee Properties by virtue of the provisions of R. 133(v) of the defense of India Rules, 1962. With the revocation of the emergency, the [Enemy Property Act, 1968](#) was enacted, whose object was to provide for continuing vesting of enemy property, which had already been vested in the Custodian of Enemy Property for India under the defense of India, Rules, 1962. The definition of the word 'enemy' in this Act of 1968 clearly excluded citizen of India and enemy property was defined to mean any property for the time being belonging to or held by or managed on behalf of an enemy. In respect of the properties so vested with the Custodian, S. 8 of the Act gave certain powers to the

Custodian to deal with that property which power included the power to transfer the same by way of sale, mortgage or lease or otherwise. The armed conflict which took place between China and India in 1962; and Pakistan and India in 1965 and 1971 can be regarded as an Act of State. Nonetheless, immovable property situate in India, but belonging to aliens, could not vest with the Government or the Custodian by an executive decision. It was necessary to promulgate the defense of India Act and the rules, which statutory provisions enabled the Government to declare certain properties to be enemy properties and thereafter, vest the same with the Custodian.

75. The aforesaid instances will show that with respect to immovable property the principle of *Lex situs* has been followed in India. In India, it is the local law of the country in which the property is situate which governs the question with regard to alienation, transfer etc. The concept of Act of State would not extend or be applicable in respect of properties situate in India, which is governed by Indian laws. If property in India, belonging to a foreign citizen, has to be acquired or transferred, then it is necessary that the provisions of the Transfer of Property Act are followed or a special enactment is made providing for such vesting, taking over, like the defense of India Act and the rules framed there under.

76. Even in *Promod Chandra Deb's case* : AIR 1962 SC1288 (*supra*) the various propositions which have been laid down by the Supreme Court, and which have been referred to hereinabove, show that the Act of State is in respect of the taking over of sovereign power by a State in respect of territory which was not till then a part of its territory. Act of State is with respect to that part of the territory which was previously foreign territory. The Supreme Court does not visualise there being an Act of State in respect of its own territory.

77. From the aforesaid it must, therefore, follow that as the property in question was located in India, the ownership of the same would not change except in accordance with the provisions of the municipal law applicable in India even though the property may be belonging to a foreign citizen. Just as the provisions of the Transfer of Property Act had to be complied with when the Maharaja of Kapurthala acquired ownership thereof, similarly, the provisions of the said law

would continue to apply to the said property and no transfer of the same could take place by an executive order of the Government, as the same is not contemplated by the Transfer of Property Act or any other law enacted in India. The decision of the Government of India with regard to the nature of the properties of Maharaja of Kapurthala, which properties were situate in Kapurthala, would, however, be regarded as an Act of State and such a decision cannot be challenged in a Municipal Court, but the immovable property situate in India would, however, not fall in that category.

78. A reference to the cases arising in India on the point whether there can be an Act of State in respect of property would show that the same were concerned only with property situate in territories which were acquired by treaties or otherwise, and which were not already a part of India. A tabulated statement in respect thereof is as follows :-

(See table on the next page)

79. From the aforesaid it will follow that the title of Maharaja of Kapurthala in the Indian immovable property cannot be divested by an Act of State as the title to immovable property is always governed by *lex situs*. Furthermore, the provisions of Art. 363 of the Constitution do not bar the present suit inasmuch as the present dispute does not arise out of any of the provisions of the covenant, treaty, agreement or enactment etc. because the plaintiff is not claiming right to the property on the basis of the covenant. The claim of the plaintiff is on the basis of a sale deed executed in his favor by the Maharaja of Kapurthala. Furthermore, it is only if the Government has acted or exercised its powers under the treaty, agreement, covenant or engagement that such exercise of powers cannot be challenged by virtue of Art. 363 of the Constitution. In this connection, a reference may usefully be made to the following observations of the Supreme Court in the case of *Madhorao Scindia v. Union of India* : [1971]3SCR9 :

' 142 The bar to the jurisdiction of the Courts by Art. 363 is a limited bar; it does not arise merely because the Union of India sets up a plea that the dispute falling within Art. 363 is raised. The Court will give effect to the Constitutional mandate if satisfied that the dispute arises out of any provision of a covenant which is in

force and was entered into or executed before the commencement of the Constitution and to which the predecessor of the Government of India was a party or, that it is in respect of rights, liabilities or obligations accruing or arising under any provisions of the Constitution relating to a covenant

80. The defendants have proceeded on the assumption that, under the Covenant, the question as to whether the property belonged to the erstwhile ruler personally or to the State had to be decided by the Government of India and this decision could take place even after the promulgation of the Constitution.

81. Article XII of the Covenant deals with the question of the property of the erstwhile ruler. The said Article is as follows:

'(1) The Ruler of each Covenant State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the 20th day of Sept., 1948, an inventory of all the immovable properties, securities, and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be so referable after the 31st day of December, 1948. '

82. The plain reading of the aforesaid Article shows that the ruler of each covenanting State was entitled to retain all private properties belonging to him on the date the administration was made over to the Raj Pramukh. Sub-Art. (2) required the erstwhile Ruler to furnish to the Raj Pramukh an inventory of all such properties belonging to him, Sub-Art. (3) merely provides that if any dispute arises whether any item of property is the private property of the Ruler or is State

property, then that dispute is to be referred to a person nominated by the Government of India and the decision of that person is final and binding on all the parties.

1. 1857-59)7Moo IndApp 476Secretary of State for IndiaCourtwas concerned with the justifiability in the Municipal Courts of seizureby East India Company of the private properties of the Raja of Tanjore2.AIR1915PC 59,Secy.ofStates v.BaiRajbai.Propertyin dispute was the village granted by Gaikwar of Baroda.The territory in which village was ceded by the Gaikwar to the BritishGovernment.3.AIR 1924 PC 216,Vajesinghji v. Secy. of State.Pattasof Land were granted to the plaintiff by the Scindia of Gwalior. Theterritories of the said land were ceded by Scindia to BritishGovernment.4.,Daoatraya Krishnarao v. Secy.ofState.Existingtitles to land within the ceded territory were in question.5. AIR 1941 PC 64,Secy, of State v. Rustam Khan.Rightsof land acquired under Khan after the cessation of territory where landsituated, was in issue.6. AIR 1947 PC 1,Asrar Ahmed v. Dargah Committee.The right to the office of Mutawali of the Durgah granted by House of Scindia was in issue, after the State was ceded to the Britishby the Scindia.7. : [1955]1SCR415 ,Virendra Singh v. State of U. P.The right to the Jagirs granted by the erstwhile Sovereign within the cededterritory was in issue.8. : [1958]34ITR514(SC) ,Dalmia Dadri Cement Co. Ltd.v. Commr.of Income-tax.Concessionsregarding the levy of in-come-tax in the ceded territory were in issue.9. : AIR 1962 SC1288 ,Promod Chandra Deb v. State of Orissa.KharboshMaintenance grant granted by ex Rulers on Junior Members of their familieswere in issue.10. : [1962]3SCR970 ,State of Saurashtra v. Mohd. Abdullah.Grantsof Rulers of Junagadh State were in issue.11. : [1964]6SCR461 ,State of Gujarat v. Vora Fiddali.Rightsin property in the State whichmerged were in issue.12. : [1969]2SCR755 ,State of Gujaratv, R. B.Chandrachud.HuzerOrder of Maharaja of Barodagranted pension and premature retirement compensation to, Civil Servantsof State were, in issue after accession.13. : [1988]1SCR650 ,D. K. Mohapatra v. State of Orissa.Orissa conditions of Teachers ofSchool in the erstwhile princely State were in issue.

83. The scheme of the Article, thereforee, appears to be that the list furnished by the Raj Pramukh is to be regarded as correct unless a dispute is raised in respect thereto. Any dispute so raised has to be decided by a person nominated by the Government of India. Neither the said Article nor any other part of the Covenant

postulates any decision being taken by the Government of India recognising the property of an erstwhile Ruler as the State property or the private property. The Covenant does not make the Government of India the final arbiter on the point in issue. If the Government of India disputes the claim of the erstwhile ruler then the only jurisdiction it has is to refer that dispute to a person nominated by it by 31st Dec., 1948. The Covenant does not provide for any decision being taken by the Government of India with regard to the nature of the property and which decision is to be regarded as final and binding on the Ruler, What is final and binding on the parties is a decision which may be taken by a nominee of the Government of India if a dispute is referred to it.

84. Looked at from this angle, it is clear that the letters of 5th Mar., 1951 and 5th May, 1951 have not been issued in terms of any of the Articles of the Covenant and the said letters are without jurisdiction or authority of law. The said letters may, at best, be regarded as raising a dispute with regard to the ownership of the property but the contention of the Government contained in the said letters cannot be regarded as a decision as contemplated under Art. XII(3) of the Covenant.

85. Any decision which is taken, like the present , which is outside the provisions of the Covenant can be challenged and the provisions of Art. 363 of the Constitution will not in any way bar the jurisdiction of the Court to adjudicate upon the validity of the said decision. The defendants have not been able to show any provision of the Covenant which entitles them to finally adjudicate upon the claim with regard to the property which may be put forth by an erstwhile Ruler. The Government assumed, wrongly, that it had the power to so adjudicate on a claim made by the Ruler. In fact no such power exists. The Government can, under the Covenant, merely dispute the claim of the erstwhile Ruler and refer the matter for adjudication by 31st Dec., 1948. If no such reference is made, the property has to be regarded as that of the, Ruler.

86. The matter may be looked from another point of view. As per the law in India this property was registered in the name of Maharaja of Kapurthala. In the list filed by him with the Raj Pramukh the Maharaja claimed this property as being his private property. It is the Government of India which, by their letters dt.5th Mar.,

1951 and 5th May, 1951, had sought to deprive the Maharaja of Kapurthala of title to the property, The question is, did the Government of India have any right or authority to declare that the property in question did not belong to the Maharaja in his personal capacity but belonged to the State of Kapurthala. The Covenant in question did not give any right of adjudication or final decision to the Government of India. It has been contended by defendant 2 that the decision of the Government of India to declare a property as State property is a decision taken on the basis of the covenant and the same cannot be challenged because of the embargo placed, by Art. 363 of the Constitution. This contention is based on an assumption, which is completely unfounded, that the Government of India has any authority, under the Covenant, to give any such final decision which is binding on the erstwhile Ruler. It is only after Covenant had enabled the Government of India to give a decision as to whether any property was private property or State property that such a decision taken could not be questioned in any Court of law. But where the Covenant does not empower the Government to arrive at any such decision, which is binding on the Ruler, the Government in purporting to give any such decision would not be acting under the provisions of the Covenant and any such decision would be without jurisdiction and can be challenged in a Court of law as such, a decision of the Government which is de hors the Covenant, will not be protected by Art. 363 of the Constitution.

87. In my opinion, therefore, the present suit is not barred by the provisions of Art. 363 of the Constitution and the effect of the defendants not invoking the provisions of Art. XII of the Covenant, which contained a clause which could be regarded as an arbitration clause, was that the claim of the Maharaja that the property in question was his private property could not be disputed. Issues 5 to 7 are decided in favor of the plaintiffs.

ISSUE No. 8.

88. According to the defendants, the property was requisitioned because there was an illegal sale and to avoid further complications so that the property did not change hands. The requisition was made with effect from 15th July, 1950 and the Government took possession of the premises on 4th Dec., 1950. At that time, by

virtue of the sale deed dt.10th Jan., 1950, the property stood transferred, by registered sale deed, in favor of R. M. Seksaria and Dewan Jarmani Dass. Under the law in India, therefore, the Government could not be regarded as owners and the owners were Seksaria and Jarmani Dass. Nevertheless the Government was considering whether to treat this property as private property or State property and without having come to a final conclusion it had requisitioned the property in question, For the purpose of the outcome of the suit it is of no consequence as to whether the Government had treated the property as personal property of the Maharaja of Kapurthala or State property. The question whether the said property belonged to Maharaja personally and whether the sale of the same in favor of R. M. Seksaria and Jarmani Dass was valid or not is not in any way affected by the requisition of the property by the Government. The issue is decided accordingly.

ISSUE NOS. 9, 10 AND 13.

89. It has been stated by defendant 3, in his evidence, that he is the only legal heir of his father Maharaja Paramjit Singh and he had succeeded to the estate left behind by him. But in view of the fact that I have held that the father of defendant 3 was the owner of the property in dispute and had the authority to sell the same, therefore the question of defendant 3 becoming liable to re-compensate the plaintiff with any amount does not arise. The issues are decided accordingly.

ISSUES 11, 12 and 14.

90. The property in question was requisitioned vide order dt. 17th June, 1950 under the provisions of Delhi Premises (Requisition and Eviction) Act, 1947. The said Act was repealed by the Requisitioning and Acquisition of [Immovable Property Act, 1952](#).

91. Section 23 of the Requisitioning and Acquisition Act, 1952, inter alia, provides that any requisition ordered prior to 25th Jan., 1952 shall be deemed to have been ordered under S. 3 of the 1952 Act and all the provisions of this Act shall apply accordingly. The result of this is that the rights and obligations with regard to the property which was requisitioned will be regulated under the 1952 Act.

92. Section 8 of the Act lays down the principles and the method for determining compensation payable in respect of property which is requisitioned. S. 9 provides for payment of compensation payable under an award, made under S. 8, to be paid to the person entitled to receive the same. Any person who is aggrieved by the award in respect of compensation can file an appeal under S. 11 of the said Act to the High Court within whose jurisdiction the requisitioned or acquired property is situate. S. 19 bars the jurisdiction of the civil courts and is as follows:

'19. Bar of jurisdiction of Civil Courts Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.'

A mere reading of the provisions of S. 19 indicates that this Court has no jurisdiction to determine what amount of compensation can be paid to the plaintiff in respect of the property which had been requisitioned. The jurisdiction to decide the amount of compensation payable, and the authorities in whom that jurisdiction is vested, is provided by the 1952 Act. Section 19 expressly bars the jurisdiction of the Civil Court, including the High Court, to adjudicate in respect of any matter which a competent authority or an arbitrator is empowered to decide or determine under the Act. If the plaintiffs have any grievance with regard to non-payment of amount of compensation then redress has to be sought before the authorities constituted under the Act of 1952. The present suit for payment of compensation is, however, not maintainable.

93. Assuming that the present suit was maintainable, it will be clear that no claim could be made for payment of compensation for a period of more than 3 years prior to the filing of the suit. Issues 11, 12 and 14 are, therefore, decided in favor of the defendants.

94. Before concluding, I might notice that the defendants sought to contend that the suit which was filed was barred by time. The submission was that the property had been declared to be the property of the State in 1951 and, therefore, suit

could not be filed in 1960.

95. In the written statement, the only plea, with regard to limitation, which was taken was that claim for compensation was barred by time. It was not pleaded in the written statement that the relief for declaration claimed therein is also barred by time. The suit was filed nearly 29 years ago and, in the absence of any plea being taken in the written statement, no issue with regard to limitation was framed. Even though the Court has the jurisdiction to decide the question of limitation, even if it is not raised, in the present case this course cannot be adopted. Apart from delay, the question as to whether the suit is barred by time or not is a mixed question of fact and law. Had an issue been raised, the plaintiff would have had an opportunity of rebutting the same and, if necessary, leading evidence. The plaintiff might have raised the contention that the decision of the Government to treat the house as State property was without jurisdiction and void ab initio and, therefore, non est. It may, possibly, have led some other evidence to show that the suit is within time. Had the defendants been serious in their objection, they ought to have amended the written statement, which they never attempted to do.

96. In view of the aforesaid, this plea cannot be allowed to be raised by the defendants.

ISSUE NO. 15 - RELIEF.

97. In view of my conclusion on the various issues hereinabove, it is decreed that the plaintiffs are declared to be the owners of the immovable property known as 3, Mansingh Road, New Delhi and are entitled to exercise all rights of ownership in respect of the same and that the defendants have no right, title or interest in the said immovable property. A decree for permanent injunction is also issued restraining defendant 1 from paying to defendant 2 any compensation for the requisition of the said immovable property or in connection with the same. It is further declared that on the order of requisition of property No. 3, Mansingh Road, New Delhi coming to an end, it is the plaintiffs who would be entitled to get the physical possession thereof. The plaintiffs are also awarded costs of the suit. The plaintiffs are not entitled to any other relief. A formal decree in the aforesaid terms be drawn up.

Order accordingly.

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