REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.5574 OF 2009

Kaikhosrou (Chick) Kavasji Framji & Anr. .. ..Appellant(s)

VERSUS

Union of India & Anr. .. .Respondent(s)

J U D G M E N T

Abhay Manohar Sapre. J.

1. This appeal is filed against the final judgment and order dated 17.06.2009 passed by the High Court of Bombay at Mumbai Writ Petition No.4386 of 2001 where by the Division Bench of the High **Court dismissed the said writ petition filed by** appellants herein.

2. Though the controversy involved in this appeal is short, in order to appreciate as to how it arose, it is necessary to set

out its background facts in detail *infra.* The facts are stated from the SLP paper books and the List of Dates furnished by the parties.

3. The appellants herein are the writ petitioners and the respondents herein are the respondents in the writ petition out of which this appeal arises.

4. The dispute relates to a property, which is situated at Survey No.417, Bungalow No.17, Dr. Coyaji Road (formerly known as "Elphinstone Road") Pune-411001. The property consisted of a main bungalow, a cottage, outhouses, garages, and an open plot of land (garden) admeasuring around 1.52 acres (hereinafter referred to as "the suit property").

5. One Burjorji Goostadji and Cooverbai Homi Karani were the owners of the suit property. They sold the suit property to one Mr. Mohammad Hajjibhoy by indenture of conveyance dated 01.03.1920 pursuant to the order of the District Judge made on a Misc. Application No.5 of 1919 granting sanction for the sale in favour of Mr. Mohammad Hajjibhoy.

6. Mr. Mohammad Hajjibhoy then sold the suit property to

one Mr. Kaihosrou Sorabji Framji by indenture of conveyance dated 28.11.1923. Mr. Kaihosrou Sorabji Framji then in turn leased out the suit property on 10.10.1929 to the Government of India for a period of five years on a rent of Rs.110/- per month.

7. Even after the lease having come to an end by efflux of time, the lessee i.e. the Government of India continued to remain in possession of the suit property. However, Mr. Kaihosrou Sorabji Framji then executed another lease deed on 19.04.1940 in favour of the Government of India for a further period of five years. In the year 1939, the lessor i.e. Mr. Kaihosrou Sorabji Framji applied to the

Cantonment Board, Pune for giving permission to undertake certain building work in the suit property. After exchange of some letters, the Cantonment Board granted the permission to Mr. Kaihosrou Sorabji Framji.

8. On 30.04.1941, Mr. Kaihosrou Sorabji Framji expired leaving behind his son Mr. Kavasji K Framji who inherited the suit property. By order dated 08.06.1943, the then Collector,

Poona requisitioned the suit property under Rule 75 A (i) of the Defense of India Rules and handed over its possession to the Military Authorities.

9. However, after three years on 23.03.1946, the suit property was de-requisitioned and the possession was handed over back to Mr. Kavasji K Framji. On 05.08.1948, the Collector again requisitioned the suit property under Section 5 (1) of the Bombay Land Requisition Act, 1948. In this order it was mentioned that Mr. Kavasji K Framji is the owner of the suit property.

10. Mr. Kavasji K Framji filed Writ Petition No.2783 of 1983 in the Bombay High Court seeking *inter alia* a relief for restoration of possession of the suit property. By order dated 14.01.1985, the Bombay High Court allowed the writ petition and directed restoration of possession of the suit property to Mr. Kavasji K Framji. The Government of India, however, did not vacate the suit property but undertook to vacate it by 30.04.1985.

11. Reverting to the events to complete the narration of facts

in chronology, on 21.01.1971, the Union of India issued a resumption notice in relation to the portion of the suit property (about 22,168 sq. feet). The notice was founded on the allegations *inter alia* that the suit property was held under "old grant" which empowered the Union of India to resume the subject land. The notice contained that on the expiry of 30 days period after its service, all private rights, and interest of Mr. Kavasji K Framji would be ceased. The notice offered to Mr. Kavasji a sum of Rs.4765/- by way of compensation towards the value of various structures standing on the subject land. A cheque of Rs.4765/- was sent to Mr. Kavasiji K Framji by letter dated 23.01.1971 who, in turn, declined to accept the said amount and sent his reply on 27.01.1971 objecting therein to the notice and its contents.

12. Felt aggrieved by the notice and the letter, Mr. Kavasji K F ramji filed Writ Petition No.364/1971 in the Bombay High Court challenging both the notice and the letter. The writ petition was filed on the allegations *inter alia* that the subject land was a free hold tenure and was never held by Mr. Kavasji

K Framji under any Grant or Licence from the Union of India or from any department of the Union of

India and hence it is not resumable at the instance of the Central Government.

13. Besides Mr. Kavasji K Framji, several other persons including one person namely Mr. PT Anklesaria also got similar notices from the Union of India in relation to their land. Mr. PT Anklesaria, Mr. Kavasji K Framji and others felt aggrieved and they filed writ petitions (SCA No.1286/1972) in the Bombay High Court questioning the legality and validity of the notices sent to them by the Union of India.

14. By the judgment/order dated 05.02.1979 in **Phiroze Temulji Anklesaria vs. H.C. Vashistha.**

AIR 1980 Bombay 9, the High Court allowed the writ petition and declared the notice as illegal and issued without authority of law and accordingly restrained the Union of India from giving any effect to the impugned notice. The High Court held *inter alia* as under:

> **"26. On a consideration of all the material that has been placed before us by the petitioner as well as the**

respondents, it is clear to us that there is no evidence whatsoever of the Government's right to resume the land in possession of the petitioners; there is no evidence of the terms under which that right of resumption, if any, could be exercised and most important, there is no evidence whatsoever of the right or power of the Government to acquire the structure standing upon the land in question by determining arbitrarily or unilaterally its compensation. All these three rights--the right of resumption, the right to resume upon particular terms and the right to take possession of the houses situated on the land which are mentioned in the impugned notice -- are found to be non-existing. The impugned notice, therefore, is patently without any authority of law and is not supportable by the terms of the grant which itself has not been proved."

15. The Union of India felt aggrieved and filed appeals before the Division Bench of the High Court (Special Civil Application No.364/1971). The Division Bench dismissed the appeals in the case of **Kavasji Kaikhoshrou Framji vs. D.Krishnamunny** with the following observations:

"5 The respondents have also raised two preliminary contentions as to the maintainability of the petition viz., (1) that the petitioner had not established his title to the property to enable him to maintain the petition and (2) that the petition involved disputed questions of facts and law as to title and therefore the court should not determine the same in a petition under Art.226 of the Constitution but direct the petitioner to file a suit for that purpose.

We find that in this case all the contentions raised and submissions made by both the sides are the same as those made in Special Civil Application No.1286 of 1972. In that petition, by our reasoned judgment delivered on 5-2-1979, we have negatived the respondents' said

contentions and held accepting the contentions of the petitioner that the resumption by the Government of the petitioner's land and bunglow were without any authority of law and therefore the impugned notice was invalid. On the very same reasoning in this case also we negative all the contentions of the respondents and uphold the contentions of the petitioners inter alia that the resumption of the petitioner's land by the Government was without any authority of law and therefore the impugned notice was invalid."

16. In all, 14 special leave petitions were filed by the Union of India in this Court against the judgment/order of the High Court.

17. It may here be mentioned that in the meantime, Mr. PT Ankelesaria had also filed civil suits in the Court of District Judge, Poona in the light of observations made by the Bombay High Court in (AIR 1980 Bombay page 9) and prayed for grant of relief of possession of the subject land. The District Judge, Poona decreed these suits in plaintiff's favour. The Union of India felt aggrieved and filed First Appeals in the Bombay High Court whereas the plaintiff filed cross-objections in these appeals (608-621/1980). These appeals were later transferred to this Court at the instance of the Union of India for their disposal and were renumbered as (67-72/1985 and 11-

12/1987).

18. By consent order dated 20.07.1988, this Court remitted the appeals to the Bombay High Court for their disposal as directed therein. The order reads as under:

> **"2. While considering the case, if the High Court finds that the trial Court or the first appellate Court has placed reliance or made any reference to the aforesaid judgment of the Division Bench, it shall ignore that judgment, to that extent, and the High Court shall decide the matter afresh in accordance with law without taking into consideration or being influenced by the aforesaid judgment of the Division Bench.**
>
> **3. The parties will be at liberty to adduce additional evidence before the High Court within the period fixed by the High Court.**
>
> **4. The High Court will make every effort to dispose of the cases within six months from the date of the receipt of the record."**

19. The remaining appeals were disposed of by another order dated 25.03.1992 of this Court, which reads as under:

> **"The Appeals are dismissed as infructuous in terms of the signed order placed on the file."**

20. The aforesaid order dated 25.03.1992 was later recalled by this Court on a review petition filed by the Union of India by order dated 13.01.1995. The Review Petition was allowed by this Court on the ground that the consent order was passed

only in relation to Mr. PT Ankelesaria's case by which his appeals alone were remitted to the High Court for

their disposal, whereas the other appeals could not have been dismissed as having rendered infructuous in the light of the said order.

21. In the meantime, Mr. Kavasji K Framji died and his legal representatives (appellants herein) were brought on record of the case to continue the *lis.*

22. This Court then by order dated 04.08.1998 disposed of the aforementioned appeals after recording the statement of the Solicitor General of India in the following terms:

> **"Learned Solicitor General states that the Union of India would seek dispossession of the respondent-occupants from the properties involved, in accordance with law and if need be, through a Civil Court by filing suit. In case such steps are taken, any observations made by the High Court which would tend to defeat the remedies sought would not stand in its way. On such stance of the Union of India, Civil Appeals as also the special leave petitions stand disposed of accordingly."**

23. It is with these background facts which began from 01.03.1920 and ended with the order of this Court passed on

01.08.1998, Respondent No.2- Estate Officer issued a notice on 31.07.2001 under Sub-(1) and Clause (b) (ii) of Sub-Section 2 of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the PP Act") to the appellants. The present appeal is concerned with the legality and correctness of this notice.

24. The notice in question was founded on the allegations *inter alia* that the appellants are in unauthorized occupation of the public premises mentioned in the schedule in the notice i.e the suit property and therefore the appellants should vacate the suit property. The contents of the notice read as under:

> **"Whereas the nature of Holder's rights on the land is limited only to its occupancy, therefore, being the property of the Govt. the land is liable to be resumed, in terms of conditions obtaining under the old grant terms. Accordingly the Govt. of India, Ministry of Defence resumed the land and building after giving one month's notice vide Order no.701/71/L/L & C/70/12030/D (lands) 21st January 1971 on payment of Rs.4,765/- (Rupees Four Thousand Seven Hundred Sixty Five only) towards resumption cost of authorized super structure standing thereon which has been accepted by you, albeit, under protest."**

25. The appellants felt aggrieved by the issuance of the

aforementioned notice to them by Respondent No.2 and filed a writ petition in the High Court of Bombay questioning its legality and correctness and sought its quashing. The appellants challenged the notice on several factual and legal grounds as is clear from the grounds enumerated in the writ petition.

26. The respondents filed their counter and defended issuance of the notice to the appellants including its contents. By impugned order, the High Court dismissed the writ petition and upheld the issuance of notice to the appellants under the PP Act, which has given rise to filing of this appeal by way of special leave in this Court by the unsuccessful writ petitioner.

27. Heard Mr. Darius Khambata, learned senior counsel for the appellants and Mr. Aman Lekhi, learned ASG for the respondents.

28. Mr. Darius Khambata, learned senior counsel appearing for the appellants (writ petitioner) has mainly argued the following eight points.

29. His first submission was that the High Court erred in dismissing the writ petition and thereby erred in upholding the impugned notice issued under Section 4 of the PP Act.

30. His second submission was that keeping in view the backgrounds facts stated above coupled with the orders passed by the High Court and this Court in judicial proceedings, which emanated from these facts, it is *prima facie* clear that respondent No.2 - Estate Officer had no jurisdiction over the suit property for invoking his powers under Section 4 of the PP Act against the appellants for their summary eviction and treating them to be unauthorized occupants of the suit property.

31. In other words, the submission was that the facts stated above would, in no uncertain terms, go to show that the suit property never belonged to the Union of India and on the other hand it all along belonged to the appellant's predecessors and then to the appellants and therefore respondent No.2 - Estate Officer had no jurisdiction to treat the suit property to be belonging to the Union of India for initiating proceedings

against the appellants for their summary eviction under the PP Act.

32. His third submission was that from the facts narrated above, it is clear that there does exist a *"bona fide* dispute" between the appellants and the Union of India (respondent No.1) in relation to the suit property as to who is its real owner - the appellants or the Union of India.

33. According to the learned counsel, in a situation where there arises a *bona fide* dispute between the two rival claimants over a property about their ownership such as the one which has arisen in the case at hand, the remedy of the parties lies in filing a civil suit in the civil court and seek a declaration of their ownership over the property in accordance with law but not to take recourse to any summary remedy to evict a person, such as the one done by the respondents under the PP Act against the appellants only because one of the rival claimants, i.e., respondent No.1 happens to be the Union of India.

34. His fourth submission was that, respondent No.1

through their counsel (Solicitor General) having made a statement in this Court on 04.08.1998, that respondent No.1 (Union of India) would take steps in filing civil suit in the Civil Court against the appellants for their dispossession from the suit property, and this Court disposing of the appeals of the Union of India in the light of such statement, respondent No.1 is bound by their own statement. It is therefore, urged that the Union of India must take recourse to the remedy of filing civil suit against the appellant in relation to the suit property in the civil court, which is otherwise a proper remedy available in law for claiming the relief.

35. His fifth submission was that even otherwise, looking to the nature of documents filed by the appellants and the manner in which the appellants have traced their title to the suit property, the appellants could not *prima facie* be regarded as trespassers in the suit property and nor could they be regarded as the persons in its unauthorized occupation by respondent No.1 (Union of India) so as to empower them to take recourse to the provisions of the P.P. Act.

36. In other words, the submission was that the documents relied upon by the appellants *prima facie* proved that the appellants were/are and have all along been the owners of the suit property to the exclusion of all persons including respondent No.1 (Union of India) and, therefore, no one has a right to disturb their long established possession over the suit property except by following the "due process of law".

37. His sixth submission was that the provisions of the PP Act are made applicable only to those properties which are admittedly belonging to the Central Government or the State Government as the case may be and therefore proceedings under the PP Act can be initiated against any person when he is found to be in its unauthorized occupation without any lawful authority from its real owner i.e. the Central/State Government. Such is not the case here.

38. His seventh submission was that, if respondent No.1 (Union of India) claims themselves to be the owner of the suit property (which they are not), then as urged earlier, their remedy lies in filing civil suit in the Civil Court and establish

their claim of ownership over the suit property *qua* the appellants in terms of the order of this Court dated 04.08.1998 and recover possession of the suit property from the appellants.

39. His eighth submission was that since the appellants succeeded in the High Court in the first round of litigation against respondent No.1 (Union of India) wherein the High Court quashed the resumption notice dated 21.01.1971 by order dated

05.02.1979 (AIR 1980 Bombay 9), this order still continues to hold good because none of the finding recorded therein are either set aside or modified by this Court by its order dated 04.08.1998.

40. Learned counsel while elaborating his aforementioned submissions placed reliance on the decisions in **Express Newspapers vs. U.O.I.**, (1986) 1 SCC 133, **State of Orissa vs. Ram Chandra Dev,** AIR 1964 SC 685, **Western Coalfields Ltd. & Anr. vs. Ballapur Collieries Company & Ors.** (judgment dated 11.12.2018 in C.A. Nos.4487-4488/2009),

M/s. Ballapur Collieries Company & Ors. vs. Estate Officer & Ors. (Judgement dated 22.01.2007 of the Bombay High Court(Nagpur Bench) in Civil Revision Application No.801 of 2002 and Civil Revision Application No.803 of 2003, **State of U.P. & Anr. vs. Zia Khan**, (1998) 8 SCC 483, **State of A.P. vs. Thummala Krishna Rao**, (1982) 2 SCC 134 and **State of Rahasthan vs. Padmavatidevi**, 1995 Suppl(2) SCC 872.

41. In reply, learned Additional Solicitor, Mr. Aman Lekhi while supporting the reasoning and the conclusion of the High Court in the impugned order contended that none of the submissions urged by the learned counsel for the appellants have any merit.

42. It was his submission that having regard to the previous factual history, it does not take away the jurisdiction of the Estate Officer under the PP Act to issue notice under Section 4 of the PP Act and since the suit property belonged to the Union of India, a notice under Section 4 of the PP Act could always be issued by respondent No.2 and in such a situation, the

remedy of the appellants would be to submit to the authority of the Estate Officer and file reply to enable the Estate Officer to proceed with the matter on merits and pass appropriate order.

43. In other words, his submission was that the Estate Officer possesses the jurisdiction to issue notice in question and also possesses a jurisdiction to hold an inquiry under the Act in relation to the disputes sought to be raised by the appellants and therefore the appellants should have submitted to the jurisdiction of the Estate Officer rather than to pursue the extraordinary remedy of filing the writ petition under Article 226 of the Constitution of India. It is these submissions, which the learned Additional Solicitor General elaborated while opposing the appeal.

44. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we find force in the submissions urged by the learned counsel for the appellants (writ petitioners).

45. Before we examine the facts of the case, it is necessary

to take note of the law, which deals with the issues arising in this Case. Indeed, if we may say so, it is fairly well settled.

46. This Court (Three Judge Bench) has succinctly dealt with the issues arising in this case in **Express Newspaper Pvt. Ltd. & Ors.** vs. **Union of India & Ors.** (1986) 1 SCC 133.

47. Though, in **Express Newspaper** case (supra) several other issues relating to Fundamental Rights conferred on the citizens under Article 19 (1) (a) and (g) of the Constitution and its violation *qua* State fell for consideration and were decided, this Court was also called upon to decide the legality and correctness of the notice issued by the Government of India through their officers in their capacity as the lessors of the land in question demanding therein a right of re-entry under the terms of the lease deed on the demised land from the lessee (writ petitioner of the case).

48. It is this issue, which was extensively dealt in the context of civil law as also the special laws, which provides for taking recourse to the summary

remedy by the State to take possession of the State land

from its occupants. The learned Judge A.P. Sen J. speaking for the Bench in his inimitable style of writing answered the question in paras 86/87 as under:

> **"86. The Express Buildings constructed by Express Newspapers Pvt. Ltd. with the sanction of the lessor i.e. the Union of India, Ministry of Works and Housing on plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease-deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works & Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease.**
>
> **87. Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 where admittedly there is unauthorised construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2(e) and such person is in unauthorised occupation thereof."**

49. The other two learned Judges, namely, E.S.

Venkataramiah J. and R.B. Mishra J. also concurred with the reasoning and the conclusion reached by Justice A.P. Sen on this question and supplemented their individual concurring reasoning in the following words:

> **"Venkataramiah, J.— I have gone through the judgment which my learned Brother Justice A.P. Sen has just now delivered.**
>
> **202. The rest of the questions relate truly to the civil rights of the parties flowing from the lease-deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.**
>
> **205. I allow the petitions accordingly. The costs of Petitioner 1 shall be paid by the Union Government and the Lt. Governor of Delhi. There shall be no order as to costs against the other respondents. The other petitioners shall bear their costs."**

"R.B. Misra, J.— I have perused the judgment prepared by brother

Justice A.P. Sen as also the judgment of brother Justice E.S. Venkataramiah. While I agree that the impugned notices threatening re-entry and demolition of the construction are invalid and have no legal value and must be quashed for reasons detailed in the two judgments, which I do not propose to repeat over again. I am of the view that the other questions involved in the case are based upon contractual obligations between the parties. These questions can be satisfactorily and effectively dealt with in a properly instituted proceeding or suit and not by a writ petition on the basis of affidavits which are so discrepant and contradictory in this case.

> **208. I accordingly allow the writ petitions with costs against the Union Government and the Lt. Governor of Delhi and quash the impugned notices."**

50. At this stage, it is necessary to deal with one objection raised by learned Additional Solicitor General on the aforementioned statement of law laid down in **Express Newspaper** case (supra).

51. The objection of learned counsel for the respondent was that the view expressed by A.P. Sen J. in Paras 86-87 could at best be regarded as his own view but not the view of the Court by majority because other two learned Judges (E.S. Venkataramiah J. and R.B. Mishra J.) did not express any opinion on this question. It is for this reason the learned counsel submits that this Court

should not place any reliance on the statement of law laid down in Paras 86-87.

52. We find no merit in this objection for more than one reason. We, however, consider it apposite to refer to one classic decision of the Queen's Bench

28

reported in 1889 (Vol. XXIV) page 117 (**The Guardians of the Poor of the West Derby Union vs**. **The Guardians of the Poor of the Atcham Union**) on this subject which was rightly relied on by the learned counsel for the appellants in answer to this question.

53. The question arose before the Queens Bench in **The Guardians** case (supra) as to how the Court should read a decision to find out the *ratio decidendi* laid down in the decision when such decision is delivered by the Bench of more than one Judge (as in that case by four Judges of the House of Lords) and especially when all the Judges have authored their

individual opinions on the subject.

54. Lord Esher M.R. in his distinctive style of writing succinctly explained this question in the following words:

> **"The question is, what is the true construction of the 35th section of the Act of Parliament which is before us, and, when we have got at the true construction, what is the application of it to this case?.....**
>
> **The House of Lords heard the cases, and did not give judgment at once, but considered the matter carefully, and four of the learned judges in the House of Lords gave judgment. Now we know that each of them considers the matter separately, and they then consider the matter jointly, interchanging their judgments, so that every one of them has seen the judgments of the others. If they mean to differ in their view, they so openly when they come to deliver their judgments, and if they do not do this, it must be taken that each of them agrees with the judgments of the others.**
>
> **We have then four judgments. The most elaborate of these is, no doubt, that of Lord Watson; but Lord Watson's judgment must have been read by the Lord Chancellor, and the Lord Chancellor must have discussed with Lord Watson whether he agreed with or not, and he must have agreed with it. Lord FitzGerald in terms, says, "I have read the judgment of Lord Watson, and I agree with it;" that is, he agrees not only with the result but with the mode in which the result is arrived at. Lord Macnaghten had read Lord Watson's judgment, and he does not attempt to express the smallest difference of opinion about it; he adopts the reasoning of Lord Watson and agrees with it, but he adds another reason of his own.**
>
> **What is import to-day is what is the view taken by the House of Lords of the interpretation of the third part of the 35th section. It is plain that Lord Watson has**

taken a distinct and clear view, and has stated it clearly, of what is the effect, to a certain extent at all events, of the third
clause .....
I am clear that they decided the point which is before us: that Lord Watson's judgment deals with it most specifically, that the judgment is really agreed with by the Lord Chancellor and by Lord FitzGerals, and by Lord Macnaghten, but that Lord Macnaghten has also given another reason for coming to the same conclusion."

55. The other two learned Judges Lindley LJ and Lopes LJ agreed with Lord Esher M.R.

56. Keeping in view the reasoning of Lord Esher M.R., when we examine the statement of law laid down in **Express Newspaper** decision (supra), we are of the considered view that the reasoning of A.P. Sen J. contained in Paraa 86-87 is the law laid down on behalf of all the three Judges. It is a law by majority and is thus a law laid down by the Court under Article 141 of the Constitution.

57. It is for the reason that first, though the lead judgment was authored by A.P. Sen J., the other

two Judges concurred with the view and the reasoning of A.P. Sen J. Second, both the concurring Judges also expressed their individual views on the question on the same lines on which A.P. Sen J. expressed his view and the Third, there is no dissent *inter se* Lordships on any issue much less on the issue with which we are concerned in this appeal.

58. It is for these reasons, we are of the considered view that law laid down in the lead judgment in **Express Newspaper** (supra) is the law by three Hon'ble Judges who constituted the Bench and thus binds all the Courts in the country under Article 141 of the Constitution. It satisfies the test laid down by Lord Esher M.R. in the case of **The Guardian** (supra).

59. The question involved in **Express Newspaper** case (supra) in relation to remedy of the State *qua* person in possession of the land was again

considered by a Bench consisted of three Judges in a case reported in **State of Rajasthan** vs. **Padavati Devi** [supra].

60. In that case also, the question arose as to whether the State Government can take recourse to a summary remedy of eviction of a person under the State Revenue Laws from the land when such person raises a *bona fide* dispute about his right to remain in occupation over such land. Their Lordship held that in such a situation, the summary remedy to evict such person under the Act couldn't be resorted to.

61. Justice S.C. Agrawal speaking for the Bench held in Para 6 in the following words:

> **"6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bona fide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section**
> **6 of the Andhra Pradesh Land Encroachment Act,**

1945, this Court in Govt. of A.P. v. Thummala Krishna Raol has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."

62. This view was reiterated in the case reported in **State of U.P. vs. Zia Khan** [1998 (8) SCC 483].

63. At this stage we consider apposite to take note of the Constitution Bench decision of this Court wherein this Court after examining and upholding the constitutional validity of the PP Act in **Kaiser-I-**

Hind Pvt. Ltd. vs. National Textile Corp. (Maharashtra North) Ltd. [(2002) 8 SCC 182] reiterated the view taken by this Court in an earlier decision of **Northern India Caterers (P) Ltd**. **vs. State of Punjab** (AIR 1967 SC 1581) that the PP Act does not create any new right of eviction but it only creates a remedy for a right which already exists under the general law. In other words, it was held that it only provides a remedy which is speedier than the remedy of a suit under the general law.

64. Keeping in view the statement of law laid down by this Court in cited decisions *supra,* when we examine the facts of the case in hand, we have no hesitation in holding that the appellants have raised a *bona fide* dispute on the question of ownership of the suit property *qua* respondent No.1 (Union of India).

65. *A fortiori* in such case, respondent No. 2 has

no jurisdiction to invoke the powers under section 4
35
of the PP Act by resorting to a summary procedure prescribed in the PP Act by sending a notice under Section 4 of the PP Act for appellant's eviction from the suit property. This we say for the following six reasons.

66. First, the facts set out above and the documents filed in their support, in no uncertain terms, establish that there exists a *bona fide* long standing dispute as to who is the owner of the suit property - the appellants or Respondent No.1 (Union of India).

67. Second, respondent No.1 itself admitted that there exists a *bona fide* dispute between the appellants and respondent No.1 (Union of India) over the suit property involving disputed questions of facts (see Paras 7, 8 & 18 of the Review Petition filed by Respondent No.1 in Civil Appeal Nos.608- 612 against the appellants in respect of suit property in this

Court).

68. Third, respondent No.1 (Union of India) itself stated in this Court in earlier round of litigation while disposing of their Civil Appeal Nos.609, 611613, 614 and 621 of 1980 that they would seek dispossession of the appellants from the property in question in accordance with law and, if need be, by filing civil suit in the Civil Court. The respondents cannot now be permitted to go back from their statement and take recourse to a remedy of summary procedure under the PP Act, which is otherwise not available to them.

69. Fourth, this Court while granting special leave to appeal on 03.08.2009 had also granted liberty to respondent No.1 (Union of India) to file civil suit against the appellants, if they are so advised. It was, however, not resorted to.

70. Fifth, the effect of quashing the resumption notice dated 21.01.1971 issued by the respondents

by the High Court vide order dated 05.02.1979/06.02.1979 in relation to the suit property was that respondent No.1 (Union of India) was not entitled to resort to any kind of summary remedy to evict the appellants from the suit property not only under the Bombay Land Requisition Act, 1948 but also under the PP Act because the PP Act also provides similar summary remedy of eviction.

71. Sixth, the Civil Court alone could try and decide the question of declaration of ownership of any immovable property between the parties and such disputes could not be decided in summary proceedings under the PP Act.

72. This takes us to examine another question raised by the respondents as to whether judgment rendered by the Bombay High Court dated 06.02.1979 stood merged in the order of this Court dated 04.08.1998. In our view, it does not merge.

73. In our view, the principle of merger is fairly well

settled. For merger to operate, the superior court must go into the merits of the issues decided by the subordinate court and record finding/s one way or other on its merits. If this is not done by the superior court, a plea of merger has no application in such a case and the order of subordinate court would continue to hold the field (see **Shanmugaval Nadar vs. State of Tamil Nadu** [1989 (4) SCC 187].

74. In our view, this court while disposing of the appeals by its order dated 04.08.1998, did not go into the merits of the various contentions which were decided by the High Court in its order dated 06.02.1979 and disposed of the appeal on the statement made by the respondents through the Solicitor General that respondent No.1 (Union of India) would take recourse to the remedy of the civil court by filing a civil suit.

75. Indeed, in the light of such statement made by the respondents (who were appellants in the appeal),

which resulted in disposal of their appeal, the respondents themselves did not call upon this Court to examine the merits of the issues raised by them in their appeals. In such a situation, there was no occasion for this Court to apply the mind to the merits much less to record any finding on any of the issues arising in the appeal. In this view of the matter, the principle of merger could not operate.

76. Now coming to another argument, the learned counsel for the respondents contended that there lies a distinction between the two types of Tribunals - one which exercises powers only when it is shown that certain state of facts exist and other which has jurisdiction to determine whether the preliminary state of facts exists as well as it has the jurisdiction to proceed further to do something more as explained in the case reported in **Chaube Jagdish Prasad vs. Ganga Prasad Chaturvedi** 1959 (supp) 1 SCR 733 pages 743-744.

77. It is on the basis of this submission, learned counsel contended that the Estate Officer has jurisdiction to examine the facts of this case in Section 4 proceedings under the Act.

78. We do not agree. In our opinion, once the Constitution Bench in the case of **Kaiser-I Hind** (supra) after examining the provisions of the PP Act has laid down the law as to how the PP Act operates and needs to be applied, all the issues arising under the PP Act has to be examined in the light of the law which deals with the PP Act.

79. The law laid down in **Chaube Jagdish Prasad** (supra) relied on by the learned counsel for the respondents was entirely on different context and has no application for deciding the issue involved in this appeal.

80. Yet, last submission of the learned counsel for the respondents that the writ petition was not maintainable to challenge the notice issued under Section 4 of the PP Act has no merit and deserves rejection. Suffice it to say, firstly, the High Court having entertained the writ petition and dismissing it on merits, this objection does not survive for consideration and second, in the light of long line of decisions on this question, a writ petition to question the legality and correctness of the notice issued under any Act is no bar in entertaining the writ petition in appropriate case. The case at hand was regarded as an appropriate case for entertaining the writ petition [see - **Siemens Ltd. vs. State of Maharashtra** 2006 (12) SCC 33 and **Whirlpool Corporation vs. Registrar of Trade Marks** (1998) 8 SCC 1].

81. Before parting, we consider it apposite to mention that we have set out the facts of the case

only for the purpose of appreciating and deciding the legal issue arising in the appeal namely - the validity of issuance of notice under Section 4 of the PP Act and not beyond it. We have not examined the rival claims of the parties over the property in question on merits and nor have recorded any finding on the rival claims.

82. In this view of the matter, whenever the question of ownership of the rights of the parties will be gone into by the concerned court, it shall decide the said question/s strictly on the basis of pleadings and the evidence adduced by the parties in accordance with law uninfluenced by any observations made by the High Court and this Court.

83. In the light of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. As a consequence, the writ petition filed by the appellants is allowed and the notice dated 31.07.2001 issued by respondent

No.2 (Annexure P-34) impugned in the writ petition is quashed by issuance of writ of certiorari.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
March 15,
2019