RAJASTHAN HIGH COURT

Basant Nahata

Vs.

State of Rajasthan

Civil Writ Petn. No. 3554 of 1999
(Dr. A.R. Lakshmanan, C.J. and Rajesh Balia, J.)

28.11.2000

JUDGEMENT

Dr. AR. Lakshmanan, C.J.

1. The petitioner has prayed in this case for:

(a) quashing Section 22-A of the Registration Act as inserted by the Rajasthan Legislature;
(b) quashing the Notification Annexures 3, 4, 6 and 7 issued by the State Government in exercise of the powers under Section 22-A of the Registration Act.
(c) directing the Sub Registrar to register Power of Attorney dated 16-7-1999 which was presented by the petitioner on 30-7-1999.

2. The short facts of the case are as follows :

The petitioner is a resident of Bikaner City. He is the Khatedar tenant of the agricultural lands situated at Chak No. 13 KYD, Square No. 110/24, Killa No. 1 to 25 Bighas, Tehsil Khajuwala District Bikaner. The petitioner appointed one Sukhdeo Singh as Power of Attorney, authorizing him to look after his lands, cultivate the lands, deposit the installments of the land, mortgage or sell the lands, execute the sale deed thereof and get it registered. The petitioner presented the Power of Attorney dated 16-7-1999 executed by him in favor of Sukhdeo Singh on 30-7-1999 before the Sub Registrar, Bikaner. He was advised that the Power of Attorney executed by him should be authenticated by the Sub Registrar of the area where the petitioner resides as per the provisions of

Sections 32 and 33 of the Registration Act. The petitioner submitted the Power of Attorney for registration. However, the Sub-Registrar, Bikaner has refused registration on the document making an endorsement. A copy of the Power of Attorney along with the endorsement of the Sub-Registrar has been filed along with the writ petition marked as Annexure/1. As per the endorsement of the Sub-Registrar, the document could not be registered by the registering authority as the Govt. Notification dated 26-3-1999 published in the Rajasthan Gazette dated 1-4-1999 as amended by the Notification published in the Rajasthan Gazette dated 22-4-1999 has banned the registration of such documents as opposed to public policy. Copies of the Govt. Notifications issued under Section 22-A of the Registration Act dated 26-3-1999, and 22-4-1999 have been filed along with the writ petition marked as Annexures 2, 3, 6 and 7 respectively. On the basis of those three Notifications, the Inspector General of Stamps and Registration, Ajmer issued a Circular (Annexure/5) to the Registering Authorities on 16-7-1999. The Notification Annexures 2, 3 and 4 have been issued by the State Govt. in exercise of the powers under Section 22-A of the Registration Act, which was introduced in the Registration Act by the Registration (Rejasthan Amendment) Act 1976, which received the assent of the President on 16-2-1976.

3. Section 22-A of the Registration Act reads as under:-

"Documents registration of which is opposed to public policy :
(1) The State Govt., may by notification in the Official Gazette declare that the registration of any document or class of documents is opposed to public policy;
(2) Not withstanding anything contained in this Act, the registering Officer shall refuse to register a document to which a Notification issued under sub- Section (1) is applicable."

4. According to Mr. Purohit, the learned counsel for the petitioner, Section 22-A of the Act confers arbitrary powers on the State Government to declare registration of any document as opposed to public policy. No guidelines or principles have been provided in this section for the exercise of the powers under Section 22-A of the Act. Therefore, Section 22-A is violative of Article 14 of the Constitution as it confers unguided and uncontrolled powers on the State Govt. In this context, the learned counsel for the petitioner relied on the judgment of the Supreme Court reported in *B.B. Rajwanshi v.*

State of U.P.[1] in which similar provisions in Section 6, sub-clause (4) of the U.P. Industrial Disputes Act was struck down by the Hon'ble Supreme Court as violative of Article 14 of the Constitution of India.

5. According to the learned counsel, the Notifications have been issued by the State Govt. arbitrarily. The Notifications declare registration of a power of Attorney executed in favor of a person other than in relation, as opposed to public policy where the property is situated outside the District in which the Power of Attorney is executed. Similarly, the Notifications declare registration of power of Attorney executed in favor of a person for a period of more than 3 years or unlimited period as opposed to public policy. It is submitted that these Notifications are violative of Article 14 of the Constitution of India and void.

6. Vide one Notification No. F. 2 (16) FD/Tax Div./99-196 (Annexure/6) dated 26-3-1999 as amended by Notification (Annexure/7) dated 22-4-1999, the Power of Attorneys conferring power of sale or transfer of property by any other mode, if any, the property situated outside the District where the Power of Attorney is presented for registration and if executed in favor of any person other than brother, sister, son, daughter, father, mother, husband and wife, have been declared as documents opposed to public policy under Section 22-A of the Act and the Registering Authorities are ordered not to register such instruments. This declaration, it is submitted, is absolutely arbitrary and void because classification of authorizations through Power of Attorney on the basis of the properties and its situation has no rational nexus to the object sought to be achieved through prohibition of registration of such documents. The fact that the property is situated within the District or outside the District has no rationale relating to the objected to be achieved by the Notification. As per this Notification, the Power of Attorney executed in favor of any person within the District in which the Power of Attorney is executed may be given to any person who is not a relation referred to in the Notification dated 22-4-1999 but a Power of Attorney for the transfer of the property situated outside the District is acceptable for registration only if it is made in favor of relations of the executant of the Power of Attorney referred therein. The Notification is, therefore, arbitrary and offends Article 124 of the Constitution of India and is void. Similarly, it is submitted that the notification No. F. 2 (2) FD/Tax Division/ 99-189 (Annexure/3) dated 1-4- 1999 as amended by Notification No. F.2/FD/Tax. Div. / 99-213 dated 22-4-1999 (Annexure/4) is also arbitrary. In the absence of any substantive provision of law limiting the life of any power of attorney to be a period of three years, registration of such instrument without limiting the

period of life of power of attorney is declared to be opposed to public policy. The classification between the document in which the period for the exercise of the power is limited to a period of 3 years, has no relation to the object to be achieved and, therefore, is void and unreasonable.

7. Since the Sub-Registrar has refused to register the document Annexure/1 on account of the Notifications Annexures 3 and 4, Annexures 6 and 7 and Section 22-A of the Act, the petitioner has approached this Court praying for direction to the Registrar, Bikaner to register the power of Attorney Annexure/1 according to law.

8. In support of his contention, Sri Purohit has also relied on the judgments of the Supreme Court in *Dwarka Prasad Laxmi Narain v. State of U.P.*[2] ; *B.B. Rajwanshi v. State of U.P.* [3] *State of Kerala v. Travancore Chemicals and Manufacturing Co.*[4] It is also submitted that the Notifications Annexures 6 and 7 offend Section 22 of the Registration Act. Under the said Section, a Power of Attorney is to be produced for authentication in the office of the Sub-Registrar and the Registrar within whose jurisdiction the executor of the power of attorney resides, and not where the property is situate. The Notification which compels the done of power of attorney to go to the Registrar within whose jurisdiction the property it to which it relates is situated, offends the provisions of Section 33 of the Registration Act which is a central legislation, and is void. Also there is no basis for classification of power of attorney on the ground of location of the property.

9. Learned counsel for the petitioner placed before us the English translation of Annexures 3, 4, 6 and 7 which are reproduced hereunder:

> "Annexure/3,
>
> 1 April, 1999
>
> "S.O.7. In exercise of the power conferred by Section 22-A of the Indian Registration Act, 1908 (Central Act No. XVI of 1908) P.S. applicable in the State of Rajasthan, the State Govt. hereby declares that the registration of the following classes of documents is opposed to public policy :
>
> Any power of attorney authorising the attorney to transfer any immovable property for a term in excess of six months or irrevocable or where the term is not mentioned.
>
> (No. F. 2 (2) FD/Tax-Div/99-189).
>
> By order of the Governor,
>
> Sd/-

Dy. Secretary to Government

Annexure/4

April 22, 1999

"S. Order 62- In exercise of the powers conferred under Section 22-A of the Indian Registration Act, 1908 (Central Act No. XVI of 1908), as applicable in the State of Rajasthan, it is expedient to amend the Notification No. F. 2 (3) FD-Tax-Div/99-189 dated 26-3-1999 as under :

In place of the phrase "Six months" in the above notification, the phrase "Three Years" is substituted.

(No. F. 2 (FD/Tax-Div/99-213)
By Order of the Governor
Sd/-
(Shikhar Agarwal)
Dy. Secretary Government

Annexure/6

26th March, 1999

S. Order 484 : In exercise of the powers conferred by Section 22-A of the Registration Act, 1908 (Central Act No. XVI of 1908), as applicable in the State of Rajasthan, the State Govt. hereby declares that the registration of any of the following documents is opposed to public policy :

Power of Attorney authorising the execution of the sale deed, gift, mortgage or any other document of transfer of immovable property presentation for registration before any Office other than the Sub-Registrar or Registrar respectively in whose District or Sub-Registrar the whole or some part of the property to which such Power of Attorney relates is situated.

No. F. 2 (3) FD/Tax-Div./99-186).
By Order of the Governor
Sd/-
Dy. Secretary Government

Annexure/7

22nd April, 1999

S. Order 60. In exercise of the powers conferred under Section 22-A of the

Indian Registration Act, 1908 (Cental Act No. XVI) as applicable in the State of Rajasthan, it is expedient to amend the Notification No. F. 2 (16) FD/Tax Div. /99-186 S. Order 484 dated 26-3-1999 in the public interest as under :

AMENDMENT @@

After the words "authorising" following words are added :

"Other than the Power of Attorney executed in favor of brother or sister or son or daughter or father or mother or husband or wife or grand sons or grand daughter."

(No. F.2 (3) FD/Tax Div./99-212)
By Order of the Governor
Sd/-
Dy. Secretary Government"

10. The petitioner has also filed an amendment application. In the writ petition, the petitioner has challenged the Notification issued under Section 22-A of the Act as amended by the Rajasthan Legislature. In para 10, the petitioner has challenged the Notification to declare a Power of Attorney executed in favor of a person other than the relations as opposed to the public policy if the property is situated outside the district in which the Power of Attorney is executed, but by mistake the Notification which was produced as Annexure/2 is not the Notification relating to the power of Attorney and that the Notifications in relation to the Power of Attorney have been produced as Annexures 6 and 7. In the prayer clause also (Prayer (a) (ii) is for quashing Annexure/2 although Annexure/2 does not relate to any point of dispute in the writ petition. Threrefore, the petition was filed to substitute the following in the relief clause in place of Annexure/2.

"Notification No. F.2 (3) FD/Tax Div./99-186 dated 26-3-1999 (Annexure/6) and Notification No. F.2 (2) FD/Tax Div./99-212 dated 22-4-1999 (Annexure/7)."

11. This Court has already allowed the application for amendment by order dated 19-7-2000.

12. A reply to the writ petition was filed on behalf of the respondents. Shri S.M. Mehta, Advocate General, appeared and argued the case on behalf of the State. According to Mr. Mehta, Section 22-A of the Registration Act, introduced by the

Rajasthan Amendment Act, 1976 is perfectly legal and the powers conferred on the State Govt. under this section cannot be said to be arbitrary. Moreover, there are sufficient guidelines under Section 22-A of the Registration Act to declare registration of any document and the list of documents as opposed to the public policy. The discretion conferred upon the State Govt. in this regard cannot be called to be arbitrary and Section 22-A is not liable to be struck down and the Provision is in no way violative of Article 14 of the Constitution of India. The Notifications dated 26-3-1999 and 22-4-1999 are perfectly legal and the same cannot be said to be arbitrary. So far as the Notification Annexure/3 dated 26-3-1999, as published in the Gazette dated 1-4-1999, is concerned, the same is legal. It will not be out of place to mention that the aforesaid Notification was amended by Notification Annexure/4 and the period was extended from six months to three years. In respect of the aforesaid Notifications, the Advocate General submitted that the matter was discussed in the Seminar organized by the Departmental Officers on 8th and 9th July, 1997 at Jaipur and in order to put a stop to the tactics to get executed a Power of Attorney for an indefinite period instead of getting the sale deed executed when the real nature of transaction between the executants of such instrument and holder of Power of Attorney is that of sale or transfer of immovable property. In such cases, only the Power of Attorney is given to the purchasers and the parties do not opt for execution of sale deed for years together and thereby postpone the payment of the registration fee and the stamp duty. The Notification, according to the learned Advocate General was issued to curb that tendency and also to curb unnecessary litigations. Therefore, it was considered that such type of Power of Attorneys are against the policy (sic) therefore, a limitation of three years has been put for the validity of such Power of Attorney. According to the learned Advocate General, the restriction had been put in public interest and it has rightly been considered by the State Govt. against the public policy if a Power of Attorney is executed in favor of a person for more than three years or for an unlimited period. In so far as Notification dated 26-3-1999 (Annexure/6) read with notification dated 22-4-1999 (Annexure/7) is concerned, by this Notification, the Power of Attorney conferring power of sale of property situated outside the District/Sub-District, if executed in favor of the person other than brother, sister, son, daughter, father, mother, husband and wife, have been declared as documents opposed to public policy and that the said declaration is perfectly valid and does not suffer from any vice or arbitrariness whatsoever. It is the case of the State that the limitation of three years has rightly been imposed so that in the garb of power of Attorney, the purchaser may not get the execution of sale deed postponed for indefinite period and thereby evade

stamp duty and registration charges of the alleged transaction. According to the respondents, the Sub-Registrar has rightly refused to register Annexure/1 on account of the Notifications Annexures 3, 4, 6 and 7 issued under Section 22-A of the Act and that the petitioner is not entitled to a direction from this Court to the Sub-Registrar to get Annexure/1 registered contrary to the directions contained in the impugned Notifications. Learned Advocate General submitted that the petitioner is not entitled to any relief as claimed by him in the writ petition. In support of his contentions, he has cited the case of *M/s Pannalal Binjraj v. Union of India,* [5] and the *State of Bihar v. Bihar Chambers of Commerce* [6]

13. In this case, a direction is sought by the petitioner to declare the impugned notification Exs. 3, 4 and 6 and 7 and Section 22-A of the Act as *ultra vires* and that a mandamus be issued to the Sub-Registrar to register the power of Attorney dated 16-7-1999.

14. The Power of Attorney Act, 1882 (Act 7 of 1882), came into force on the first day of May, 1882. The Power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing the document. There is no provision of the law by which a special Power of Attorney becomes compulsory registrable. A Court is not bound to presume its genuineness unless it is registered.

15. Section 32 of the Indian Registration Act, 1908 (XXXVI) deals with the persons who can present a document for registration. Section 32 says, every document to be registered under this Act, whether such registration be compulsory, or optional shall be presented at the proper registration office. The document shall be presented by such person executing or claiming under the same or claiming under the decree or order. It can also be presented by the representative or assignee of such person, or by the agent of such person, representative or assignee, duly authorised by Power of Attorney executed and authenticated in the manner mentioned in the Act. Section 28 of the Registration Act deals with the place for registering documents relating to land. The document, as per this section, shall be presented for registration in the office of Sub-Registrar within whose Sub-District the whole or some portion of the property to which such document relates is situated. Under this section documents mentioned in Section 17, sub-section (1) clauses (a), (b), (c) and (d) shall be presented for registration in the office of the Registrar within whose Sub-District, the whole or some portion of the property to which such property relates is situated. Section 17 of the Act deals with documents of which registration is complusory. In so far as Power of

Attorney is concerned, it is not the document which by itself creates, declares, assigns, limits or extinguishes any right, title or interest, in the immovable property, nor it is compulsorily registrable.

16. Section 22-A was added by the Rajasthan Act of 1976. Section 22-A was inserted in the Central Act 16 of 1908, after Section 22 of the Principal Act. Under the inserted Section 22-A, the State Govt. by Notification in the Official Gazette declare that the registration of any document or class of documents is opposed to public policy and that the Registering Officer shall refuse to register a document to which a Notification issued under sub-section (1) is applicable. Section 32 makes it imperative that every document to be registered shall be presented at the proper registration office by some person executing or by the representative or assign of such person, or by the agent of such person, representative or assign duly authorized by Power of Attorney executed and authenticated in the manner provided in Section 33. The object of the Legislature in enacting Section 32 of the Act is to prevent some out-sider from presenting for registration a document with which he has no concern and in which he has no interest. This Section, as already noticed, applies to all documents presented for registration irrespective of whether registration is compulsory or optional. It applies even to registration of Power of Attorneys. But, it has no application if a Power of Attorney is produced merely for authentication in which case, the only requirements that have to be complied with are those set out in Section 33. Thus, Section 32 of the Act would apply only if a Power of Attorney is presented for registration and not when it is produced merely for authentication. The basic principle underlying these provisions of the Act is to get before the Sub-Registrar the actual executant who in fact executes the document in question. It is held by the Courts that the Registration Act being a decretal measure must be strictly complied with. It is settled law that Power of Attorney have to be construed strictly and limited to the exact words contained therein. Section 33 applies where a person presenting a document is the general attorney of the person executing it and not where it is presented for registration by the actual executor. The provisions relating to the Special Power of Attorney under the Registration Act are merely for the purpose of recognizing him as a proper person to present a document for registration and has nothing to do with the authority of the execution to execute it. Under Section 33 of the Act, a Power of Attorney is recognized as an agent to get the document registered and executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub- District the principal resides.

17. Under Section 22-A, the State Govt. may by Notification in the Official Gazette declare that the registration of any document or class of documents is opposed to public policy and that the Registering Officer shall refuse to register a document if the registration of any document is opposed to public policy.
18. The expression 'Public Policy' has a different meaning from the expression 'Policy of law'. While the concept 'Policy of Law' referes to 'Policy of Legislation' or 'object of legislation' in enacting or making any law, the expression 'Public Policy' is a matter of judicial interpretation in adjudging any action on the touchstone whether it is for the good of people at large and not opposed to public interest in the sense that it does not oppose to law governing such action. Thus, the concept of 'Public Policy is not only distinct from that of the 'Policy of law' but invites application of different principle in their determination. 'Public Policy' is a principle of judicial legislation or interpretation founded on the current needs of the community. The interest of the whole public must be taken into account. 'Public Policy' does not remain static but it varies from generation to generation and even in the same generation. it cannot remain in fixed moulds for all time. It is variable and depends upon the welfare of the community.

19. Therefore, it is the duty of the Court to discover what 'Public Policy' should be at the present moment as mentioned in Section 22-A of the Registration Act.

20. In *Murlidhar v. State of U.P.* [7] the Supreme Court had occasion to consider 'Public Policy'. The matter has reached the Apex Court in the following background giving rise to two appeals No. 2370/69 and 583/70. The appellant Murlidhar filed a petition before the High Court of Allahabad praying that the order passed by the State Govt. allowing revision filed by the State Govt. allowing revision filed by the respondent be quashed and possession of the premises in question be given to them under Section 7-A of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter to be referred to as 'the U.P. Act'). In that case, the original owner leased the premises for exhibition Cinema and that lease was terminated by efflux of time. The original owner leased the premises by a deed for ten years to one Ram Agyan Singh, respondent No. 2 but there was no order allotting accommodation to him under Section 7 (2) of the Act. Respondent No. 2 also used the premises for exhibiting cinematographic films. Dispute arose between the parties. The original owner filed a suit for recovery of rent as well as ejectment against respondent No. 2. The appellant Murlidhar purchased the premises from original owner Gupta by a Sale Deed. Thereafter, they filed an application under Section 7 of the Act read with Rule 6 for release of accommodation

in their favor. The Addl. District Magistrate allowed the application and permitted Murlidhar to take possession of the premises on the basis that the premises were in illegal occupation of respondent No. 2. The representation against the order filed by respondent No. 2 to the State Govt. was rejected on the ground that there was no provision for any interference by the Govt. with the order. Thereafter, Murlidhar filed an application for eviction of respondent No. 2. The Addl. District Magistrate passed the order of eviction. Respondent No. 2 went up in revision and the revisional authority confirmed the order of the Addl. District Magistrate. The respondent No. 2 filed application under Section 7-F of the Act before the State Govt. against the order, which was allowed by the State Govt. holding that the respondent No. 2 was not liable to be evicted from the premises. The State Government communicated to the parties a summary of the reasons on the basis of which the order had been passed holding that the respondent No. 2 was in lawful occupation and in these circumstances, he was entitled to the benefit of the proviso to Section 7A (1) of the Act and was not liable to be evicted from the premises. Murlidhar filed writ petition before the High Court and the High Court quashed the order and on appeal, the Division Bench reversed the order against which the Special Leave to appeal had been filed on the basis of the certificate granted. The Civil Appeal No. 2370/69 arose out of the order allowing the revision filed by respondent No. 2 by holding that he was not liable to be evicted for the reasons briefly communicated. The Supreme Court was not satisfied that the order of the State Govt. as it stood vitiated by an error of law apparent on the face of the record. Accordingly, the Supreme Court dismissed the Appeal.

21. The consideration of Public Policy arose in C.A. No. 583/71 in the context of Section 3 (1) of the U.P. (Temporary) Control of Rent and Eviction Act 1947 which had envisaged that 'Subject' to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds....." In Civil Appeal No. 583 of 1971 (by certificate), the Supreme Court was concerned with the question whether the suit filed by Murlidhar for possession of the premises, which is subject matter of other Civil Appeal, on the basis of the tenancy created by the original owner Gupta in favor of second respondent, which had expired and as such, the appellants Murlidhar and others were entitled to recover possession of the same, was maintainable in law in view of the fact that it was instituted without obtaining the permission of the District Magistrate under Section 3 (1) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. The

trial Court held that the appellant cannot claim the benefit of Section 3 on account of clause 20 of the lease deed and decreed the suit. On appeal, the High Court reversed the decree holding that the suit was not maintainable. Two questions arose for consideration in the above appeal. The Supreme Court was considering the question as to whether Section 3 was enacted only for the benefit of the tenants or whether there is a public policy underlying it which precludes a tenant from waiving its benefit. In para 27, the Supreme Court has observed as under:

> "There can be no doubt about the policy of the law, namely, the protection of a weaker class in the community from harassment of frivolous suits. But the question is, is there a public policy behind it which precludes a tenant from waiving it."

In para 30, their Lordships further observed as under:

> "Public Policy" has been defined by Winfield as "a principle of judicial legislation or interpretation founded on the current needs of the Community" (See Percy H. Winfield", "Public Policy" in English Common Law", 42 Harvard Law Rev. 76). Now, this would show that the interests of the whole public must be taken into account; but it leads in practice to the paradox that in many cases what seems to be in contemplation is the interest of one section only of the public and a small section at that. The explanation of the paradox is that the Courts must certainly weigh the interests of the whole community as well as the interests of the considerable section of it, such as tenants for instance, as a class as in this case. If the decision is in their favor, it means no more than that there is nothing in their conduct which is prejudicial to the nation as a whole. Nor is the benefit of the whole community always a more tacit consideration."

22. The Supreme Court held that Section 3 is based on Public Policy and that it is intended to protect a weaker section of the community with a view to ultimately protecting the interest of the community in general by treating equality of bargaining power. Although the section is primarily intended for the protection of the tenants only, the Court observed that the protection is based on public policy and that the respondent could not waive the benefit of the provision and that language of the section is prohibitive in character and it precludes a court from entertaining the suit. Accordingly, the Supreme Court dismissed the appeal.

23. In *Mohammed Yunus v. Urban Improvement Trust, Jodhur,* [8] the land allotted to the respondent No. 3 was not being used for the purposes it was allotted. The appellant Mohd. Yunus raised construction thereon without any prior sanction or authority of law. It was observed by the Division Bench that his induction has to be ignored as it was of no consequence and he cannot take a stand that he was legally inducted by respondent No. 3 during subsistence of the license in his favor for the reason that his induction was inconsistent with the terms and conditions incorporated in the license itself. In spite of all these, the appellant had a right not to be thrown out of the possession forcibly as where a person is in settled possession of property, even on the assumption that he has no right to rop, it was observed that the contesting respondents have taken recourse to the provisions of Section 92-A of the Act of 1959, which provides for a summary procedure for eviction of trespasser. The appellant had been served with a show cause notice and was given an opportunity to explain his case by appearing in person also before the competent authority in law and it was only after considering his reply and hearing him, the impugned order had been passed. In such a situation, the Division Bench has observed that the appellant cannot be permitted to agitate an issue that he is being dispossessed without due process of law. The Division Bench after considering various decisions on Public Policy was of the opinion that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and when the learned single Judge has done substantial justice, no interference is required in the appeal. In para 39, the Division Bench further observed as under:

> "In sum and substance, on the basis of above, we uphold the judgment under challenge, on reaching the inescapable conclusion that competent authority of the UIT, in exercise of its powers under Section 92-A of the Act of 1959, can cause removal of trespasser/ unauthorized occupant from public land, public street or public amenities of public use, after adopting a just, fair and reasonable procedure. Trespasser/Unauthorized occupant cannot insist to be dispossessed by taking recourse to some other law in force for the time being , for the reason that adjudicating of such a dispute is the procedural right to which no one has a vested right. While entertaining the writ petition, the Court should exercise the discretionary/ equity jurisdiction only in furtherance of the cause of justice after weighing the public interest vis-a-vis private interest."

24. In view of the above, the Bench dismissed the appeal and permitted the appellant

to retain possession of the premises in dispute for three months on certain terms and conditions and also reserved liberty to Urban Improvement Trust to recover the damages for the use of the property for the past period from the appellant in accordance with law.

25. In *M/s. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh*[9] the Supreme Court was considering the scope and ambit of the phrase reasonable restriction. The phrase 'reasonable restriction' connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19 (1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness. The Supreme Court observed in para 6 of the Judgment as follows:

> "Legislation which arbitrarily or excessively invades the right , cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed under Article 19 (1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness. It is in the light of these principles that we would proceed to examine the provisions of this Control Order, the validity of which has been impugned before us on behalf of the petitioners."

26. In this light, the Supreme Court has proceeded to examine the provisions of the Control Order, validity of which had been impugned before them on behalf of the petitioner. In that writ petition, the petitioners have challenged the validity of coal control order, the declaration of prices made and also the order cancelling the license of the petitioner. The constitutional validity of the U.P. Coal Control Order has been assailed before the Supreme Court on the ground that its provisions vest an unfettered and unguided discretion in the licensing authority or the State Coal Controller in the matter of granting or revoking licenses, in fixing prices of coal and imposing conditions upon the traders. The Supreme Court was of the opinion that the Control Order had not imposed reasonable restrictions upon the free trade enjoyed by the petitioners and consequently, the declaration of the 16th July, 1953 cannot be held to be invalid and a writ of mandamus was issued against the State preventing them from enforcing the cancellation order.

27. In *State of Kerala v. Travancore Chemicals and Manufacturing Co.*[10] the State of Kerala aggrieved by the common judgment of the Kerala High Court, which held Section 59-A of the Kerala General Sales Tax Act as being invalid, preferred Civil Appeals before the Supreme Court. The respondents before the Supreme Court were manufacturing and selling various commodities like copper sulphate, batteries, battery plates, electrical goods etc. The State Govt. in exercise of the powers given by Section 59-A issued orders from time to time purporting to clarify the rate of sales tax. In April 1984, an order was issued to clarify the rate of sales tax on various items. One of the items contained in this order was tinned foods like Horlicks, Viva, Boost, Bournvita, Ovamalt etc. By this order, the Government stated that the said items of tinned food were covered by Entry 6 of the First Schedule of the Act. M/s. Parry and Company, one of the respondents in these appeals, made a representation in regard to the classification of the aforesaid item. The Govt. sent a reply stating that the decision by the Govt. in determining the entries under which different items would fall, in exercise of its power under Section 59-A of the Act. The main contention of the dealers was that Section 59-A gave the Govt. arbitrary and unguided power in determining rate of tax applicable to different items and further more, the said power had in fact been exercised in an arbitrary manner. The High Court came to the conclusion that Section 59-A had all the features of deleterious vagueness and it was unconstitutional, being violative of Article 14 of the Constitution. On behalf of the State of Kerala, it was contended before the Supreme Court that Section 59-A is a piece of delegated legislation conferring power on the Govt. to decide any question regarding rate of tax and that this power was in respect of classification under the Schedule and not for levying a tax. It was submitted on behalf of the respondents that the effect of Section 59-A is that whenever a direction is issued under the said provision, the statutory right of appeal is taken away and the section itself contains no guidelines and give unbriddled powers to the Govt. to act in any manner it feels like. The Supreme Court held :

> "A plain reading of Section 59-A shows that if any question relating to the rate of tax leviable under the Act on any goods is referred to the Govt. then its decision thereon, "notwithstanding any other provision in this Act is final. " This Section does not indicate as to who can make a reference to the Govt. There is no obligation on the Govt. to hear any dealer before it decides as to the rate of tax leviable on the sales or purchase of any type of goods. In fact, as we

have noticed by an omnibus order dated 23-4-1984, the Govt. decided rates of tax payable in respect of various items without any opportunity of being heard having been granted to any of the dealers. Lastly, Section 59-A clearly states that the decision so given by the Govt. shall be final and would have an overriding effect."

28. The Supreme Court further held in para-13 as under :

"S. 59-A enables the Govt. to pass an administrative order which has the effect of negating the statutory provisions of appeal, revision etc., contained in Chapter VII of the Act which would have enabled the appellate or revisional authority to decide upon questions in relation to which an order under Section 59-A is passed. Quasi-judicial or judicial determination stands replaced by the power to take an administrative decision. There is nothing in Section 59-A which debars the Govt. from exercising the power even after a dealer has succeeded on a question relating to the rate of tax before an appellate authority. The power under Section 59-A is so wide and unbriddled that it can be exercised at any time and the decision so rendered shall be final. It may well be that the effect of this would be that such a decision may even attempt to override the appellate or the revisional power exercised by the High Court under Section 40 of the Act as the case may be. The section enables passing of an executive order, which has the effect of subverting the scheme of a quasi judicial and judicial resolution of the lis between the State and the dealer."

29. The Supreme Court also observed that Section 59-A does not contain any guidelines as to at what stage, the power can be exercised and nor does the exercise of such a power make it amenable to the appellate or revisional provisions provided by the Act. The Supreme Court was of the opinion that Section 59-A of the Act is violative of Article 14 of the Constitution and the High Court was right in striking down these provisions.

30. In B.B. Rajwanshi's case (AIR 1988 Supreme Court 1089) [supra], the appellant questioned the constitutional validity of Sub-section [4] of Section 6 of the U.P. Industrial Disputes Act, 1947 and also the validity of the order dated 5-12- 1984 passed by the Govt. remitting an Award passed by the Labour Court for reconsideration by it. The appellant was an employee of the Management whose

services were terminated which led to an industrial dispute. The State Govt. referred the dispute for adjudication. The Labour Court held that the appellant was a workman and that the termination was illegal and he was entitled to be reinstated in his post with continuity of service, back wages and other benefits. The State Govt. instead of publishing the Award in the Official Gazette, as required by Sub-section [3] of Section 6 passed an order under Section 6 [4] of the Act remitting the matter for consideration under Sub-section [4] of the Section 6 of the Industrial Disputes Act, 1947. The appellant workman appeared before the Labour Court and submitted that he did not want any reconsideration of the Award. On behalf of the Management, an application was filed that the Management wanted to produce some records to show that the appellant never worked as a workman. The appellant opposed the said application. The case, after some adjournments, was transferred to another Court. The Management also moved the State Govt. to transfer the case from the Labour Court to another Industrial Tribunal on the ground that the Labor Court was biased against the Management. The State Govt. passed an order transferring the case from the Labour Court to the Industrial Tribunal, Meerut. Aggrieved by the order remitting the Award to the Labour Court and the subsequent order transferring the case to the Industrial Tribunal, the appellant filed writ petition in the High Court of Allahabad questioning the orders. The High Court dismissed the writ petition but set aside the order of transfer passed by the State Govt. Aggrieved by the Judgment, the appellant filed appeal by Special Leave and raised additional ground before the Supreme Court questioning the constitutional validity of Sub-section [4] of Section 6 of the Act itself. The Supreme Court considered the question relating to the constitutional validity of sub- Section [4] of Section 6 of the Act and observed that the effect of an order passed by the State Govt. under Section 6[4] can be, in a given case, a total annulment of the Award given by the Labour Court or the Industrial Tribunal. In Paras 9, 12 and 17 of the said Judgment, it is observed as follows :

> "The questions raised before the Labour Court were very simple ones. They had no effect on the national economy. They did not in any way interfere with the principles of social justice. No grave consequences would have ensued if the award had been published in the Official Gazette and the parties, allowed to question its validity before the High Court under Article 226 of the Constitution of India or before the Supreme Court under Article 136 of the Constitution. The parties had not been given notice by the State Government to show cause why the award should not be remitted to the Labour Court for a fresh consideration.

> The order of the State Government also did not state why and on what points the State Government was not satisfied with the award and the questions on which the Labour Court was required to reconsider its award."

When once a decision is given by a quasi-judicial authority, it would not be safe to confer on any executive authority the power of review or remission in respect of the said decision without imposing any limitation on the exercise of such power, Even when a Court is conferred the power of review, such power can be exercised ordinarily under the well-known limitations as are found in Order 17 of the Civil Procedure Code. Similarly, under section 16 of the Arbitration Act, 1940, the power to remit an award to the Arbitrator can be exercised by a Civil Court only under the circumstances specified in that connection. Sub-section (4) of section 6 of the Act imposes no such limitations.

There was one other good reason for taking the view that without any guidelines it will not be appropriate to confer power on the State Government to nullify virtually the effect of an award by exercising its power under section 6(4) of the Act. The Act applies not merely to disputes arising between private management and labour unions and the workmen employed by them but also to industries owned by the State Government and their workmen. In the cases where the Government is the owner of the industry, it would be inappropriate to confer uncontrolled and unguided power on the State Government itself to remit the award passed on the industrial disputes arising in such industries for there is every chance of the power being exercised arbitrarily in such cases."

31. Taking into consideration all aspects of the case including the object with which the Act was enacted that Sub-section [4] of the Section 6 of the Act is violative of Article 14 of the Constitution of India and it confers unguided powers on the State Govt. remitting the case for reconsideration by the Labour Court. The State Govt. was directed to publish the Award and proceed further. The appeal was accordingly allowed.

32. Learned Advocate General submitted two rulings of the Supreme Court reported in *M/s. Pannalal Binjraj v. Union of India* [11] and *State of Bihar v. Bihar Chamber of Commerce* [12]

33. In M/s. Pannalal Binjraj's case (AIR 1957 Supreme Court 397) [supra], a question of law was raised before the Supreme Court whether Section 5[7-A] of the Indian Income Tax Act is *ultra vires* the Constitution infringing the fundamental rights as enshrined in Articles 14 and 19[1][g] of the Constitution. Under Section 5[7-A] of the Indian Income Tax Act, 1922 it was provided that the Commissioner of Income Tax may transfer any case from one Income Tax Officer to another Income Tax Officer who is subordinate to him and the Central Board of Revenue may transfer any case from any one Income Tax Officer to another Income Tax Officer and that such transfer may be made at any stage of the proceedings, and shall not render necessary reissue of any notice already issued by the ITO from whom the case is transferred. This sub-section was inserted by Section 3 of the Income Tax (Amendment) Act, 1940, which was passed as a result of the decision of the Bombay High Court in *Dayaldas Kushiram v. Commissioner of Income Tax* [13] By Income Tax Amendment Act, 1956, an explanation was added to Section 5[7-A] in terms of the decision of the Supreme Court in *Bidi Supply Co. v. Union of India* [14] Thus, Section 5[7-A] together with the Explanation came up for consideration before the Supreme Court. The arguments of behalf on the petitioners were that Section 5[7-A] invests the Commissioner of Income Tax and the Central Board of Revenue with naked and arbitrary power to transfer any case from any one Income Tax Officer to another without any limitation in point of time and the said power is unguided, uncontrolled and discriminatory in its nature. It was argued on behalf of the Revenue that the provision contained in Section 5[7-A] is a measure of administrative convenience enacted with a view to more conveniently and effectively deal with the cases of the assessee where the Commissioner of Income Tax considers it necessary or desirable to transfer any case from one Income Tax Officer subordinate to him to another or the Central Board of Revenue considers it necessary or desirable to transfer any case from any one Income Tax Officer to another. It was also contended that the assessee whose case is thus transferred is not subjected to any discriminatory procedure in the matter of his assessment. The power which is thus vested is a discretionary power and is not necessarily discriminatory in its nature and that abuse of power is not to be easily assumed where discretion is vested in such high officials of the State. The Supreme Court after considering the material placed before it, came to the conclusion that the consideration in transferring the case of the assessee will depend upon the particular circumstances of each case and no hard and fast rule can be laid down for determining whether the particular case should be transferred to an Income Tax Officer of a particular area and that such discretion should necessarily have to be vested in the authority concerned and merely

because the case of a particular assessee is transferred from the Income Tax Officer of an area within which an assessee resides or carries on business to another Income Tax Officer whether within or without the State will not be itself be sufficient to characterize the exercise of the discretion as discriminatory and that this power is not vested not in minor officials but in top ranking authorities and that this power cannot be construed as abuse of power and that the said abuse cannot be easily assumed where the discretion is vested in such high officials. The Supreme Court further observed that there is no fundamental right in an assessee to be assessed in a particular area or locality and that the said right is not an absolute right but is subject to the exigencies of tax collection. The Supreme Court has also considered the broad distinction between discretion which has to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by the Statute in paragraph 34 of its judgment. In conclusion, the Court has observed that Section 5 of the Act is not violative of the Constitution and also does not impose unreasonable restriction to carry on trade and business enshrined in Article 19[1][g] and if there is any abuse of power, it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution. The Supreme Court has also observed that it would be prudent if the principles of natural justice are followed, where circumstances permit before any order of transfer under Section 5[7-A] of the Act is made by the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however, briefly to writing. The Supreme Court came to the conclusion that there is no substance in the writ petitions and accordingly, dismissed the same. No question of consideration of public policy behind the provision was involved. It involved only question whether for administrative convenience of Revenue Department the cases of one assessee could be transferred from one I.T.O. to another by Authorities to whom they are subordinate. However, it may be noticed that while upholding such power, the Court made it clear that still ingredient of fairness and reasonableness are necessary for exercise of such power by impelling the authority exercising such power in individual cases to follow principles of natural justice before such power is exercised.

34. In the case of *State of Bihar v. Bihar Chambers of Commerce* [15] the State of Bihar enacted the Bihar [Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein] Act, 1993 and provided for levy of tax on entry of scheduled goods into a

local area for consumption, use or sale therein at a rate, not exceeding five per cent. The goods mentioned in the Schedule are : [i] motor vehicles; [ii] tobacco products ; [iii] Indian made foreign liquor; [iv] vegetable and hydrogenated oils, and [v] cements, crude oil etc. The levy was upon the entry of scheduled goods into a local area for consumption, use or sale therein. The proviso to Sub-section[3] empowered the Govt. to specify different rates of tax for different goods. The writ petitions were filed by the dealers in the High Court questioning constitutional validity of the Ordinance/Act. The High Court struck down the Act on the ground that the State has failed to place any material before the Court to show that the impugned tax is either compensatory or regulatory in nature and the levy must, therefore, be held to be impeding the freedom of trade, commerce or intercourse guaranteed by Article 301 of the Constitution. The High Court also held that the proviso to Section 3(1) and Section 6 of the Act are void being violative of Article 14 of the Constitution and that both the said provisions conferred an unguided and unanalyzed powers upon the Govt. The State filed Special Leave Petitions against the Judgment. Several contentions were urged before the Supreme Court by the counsel for the petitioners and the respondents. The Supreme Court considered the questions whether the impugned tax has been considered to be compensatory or whether it can be treated as regulatory measure along with questions Nos. 2 and 3 [legislative competence], question No. 4 whether the enactment is outside the purview of Entry 52 in List II of the Seventh Schedule and question No. 5 whether the proviso to Section 3(1) and Section 6 are void for the reason assigned by the High Court. The Supreme Court also considered the proviso to Section 3(1) and Section 6 as to whether they are violative of Article 14. In concluding paragraph of the judgment (para-38), the Supreme Court observed as under :

> "The proviso to Section 3(1) empower, the State Government to specify different rates of entry tax for different commodities mentioned in the Schedule to the Act. This is, however, subject to the ceiling of five per cent specified in Section 3 itself. In such a situations it cannot be held that the power conferred upon the State Government to specify the rate of tax is unguided. In *Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi,* [16] it was held that where the power is given to a responsible elected body like the municipal corporation to prescribe the rates of tax subject to a ceiling prescribed and where the rates fixed have to be submitted to the Government for its sanctions it cannot be held to be a case of excessive delegation of legislative power. In this cases the delegation is to the State Government and a ceiling is

also prescribed. The State Government must be deemed to be aware of the needs of the State and the interest of its people. It is the State Government that prepares the budget for every year. The very provisions of the Act and its scheme coupled with the above factors provide sufficient guidance to the Government in the matter of specification of the rates. It cannot, therefore, be held that the proviso confers an unguided power upon the State Government. Now, coming to Section 6, it confers upon the State Government the power to grant exemption to any class of persons from the operation of the Act. Such a power has consistently been upheld by this Court in a number of decisions commencing from *P.J. Irani v. State of Madras* [17] In fact, such a provision is a common feature in all the taxing enactments and many other enactments. It has been held that the very scheme and the provisions of the Act do provide the necessary guidance. Accordingly, we hold that the High Court was in error in declaring Section 6 to be void for being violative of Article 14."

35. The Supreme Court for the above reasons, allowed the appeal filed by the State of Bihar and set aside the judgment of the High Court. The Supreme Court also held that the State has established that the impugned tax is compensatory in nature and requirement of Article 304(b) has been satisfied in the case.

36. The above two judgments cited by the learned Advocate General will be of no assistance to decide the question as to whether the State Govt. can declare that the registration of any document is opposed to public policy.

37. In the case of Pannalal Binjraj, (supra), the Supreme Court was called upon to determine the question, whether a particular Income Tax Officer or the Central Board of Revenue should assess the case of the assessee depending upon the convenience of the assessee and exigency of tax collection and that the Income Tax Officer or the Central Board of Revenue can transfer the case of a particular assessee from one file to the other. The Supreme Court was not called upon to pronounce upon any public policy. The Supreme Court decided the issue holding that Section 5(7-A) is not violative of the Constitution and does not impose any unreasonable restriction on the fundamental right to carry on the business.

38. In the second case of *State of Bihar v. Bihar Chambers of Commerce (AIR 1996 Supreme Court 2344)*, (supra), the Supreme Court was considering the question as to

whether levy upon the entry of scheduled goods into a local area for consumption, use or sale therein and that such levy is violative of Article 14 of the Constitution. The Supreme Court upheld the validity of the Act and declared that Section 6 is not void being violative of Article 14. The above judgments in our opinion are distinguishable on facts and law and, therefore, have no application to the facts and circumstances of the case on hand.

39. In the instant case, the State Govt. issued Notifications Annexures 3,4 and 6 on 26-3-1999. The Notification Annexure/6 dated 26-3-1999 was amended by Notification Annexure/7. By Annexure/3, the State Govt. declared that the power of Attorney to transfer any immovable property for a term of six months is or irrevocable or where the term is not mention, is opposed to public policy. By Notification Annexure/4 the words "three years" in place of six months was substituted.

40. In our view, the declaration made in Notification Annexure/6 that a Power of Attorney authorizing a transfer of immovable property which is presented for registration in the office other than the Registrar or the Sub-Registrar within whose jurisdiction the property is situated has to be declared as opposed to public policy and no public policy is involved. Mere execution of a Power of Attorney does not result in transferring of any immovable property which is mentioned in a Power of Attorney. In whom an executor of power of attorney reposes his trust for delegating his authority to deal with such property cannot be denied by such Notifications in the name of Public Policy. Substantive law permits authorization in favor of any person to deal with interest mentioned in a power of attorney executed by a person delegating his authority. This right flows from other legislative provisions. Registration Act, which deals with registration of any instrument, whether compulsorily registrable or not, on presentation, is not a legislation dealing with substantive provisions dealing with rights of the persons. The fact that non registration of a document which under law is compulsorily registrable results in consequences having the effect on admissibility of such document in evidence as proof of such transactions or renders the transaction incomplete, cannot inhere in it the authority to provide for delegated authority in favor of any one to impinge upon such substantive right to render the duly executed documents, in accordance with substantive provision of law which do not require registration under law but is offered for registration voluntarily to be ineffective, by declaring it against public policy and prohibit its registration to defeat the very object of Registration Act which lends credibility to existence of a document which is

registered. In our view Section 22-A confers arbitrary powers on the State Govt. to decide the question whether a particular document executed by a party is against public policy or not. This question cannot be decided by the registering authority, which can only be decided by the Courts. This section, in our opinion, gives unanalyzed power to decide the question whether a particular document is opposed to public policy or not. It enables the Government to pass an administrative order which has effect of effacing statutory provision of appeal/revision petition in case the matter is decided by the Courts. The quasi judicial or judicial determination of the question stands replaced by the power to make administrative decision. As pointed out by the Supreme Court, the power given to the authorities gives absolute power to declare any document as opposed to public policy and refuse registration on that count. In our view, no finality can be given to such a decision. The effect of Section 22-A is that whenever a direction is issued under the said provision, the statutory right of appeal etc. is taken away and that the section contains no guidelines and gives unbridled powers to the respondents to act in any manner it feels like. Section 22-A enables the Govt. to pass an administrative order which has the effect of effacing the statutory provisions of appeal, revision etc. which would have enabled the statutory authorities to decide upon a question in relation to which, an order under Section 22-A is passed. The Supreme Court in such a situation, has held that the quasi judicial or judicial determination stands replaced by the power to take an administrative decision. The section, as rightly pointed out by the counsel for the petitioner, does not contain any guidelines as to at what stage, the power can be exercised and nor does the exercise of such a power make it amenable to the appellate or revisional provisions provided by the Registration Act. As pointed out by the Supreme Court in B.B. Rajwanshi's case (supra), the question at issue did not in any way, interfere with the principles of social justice or public policy.

41. In our view, the power given under Section 22-A is liable to be misused and, therefore, it is liable to be struck down on the ground that it is violative of Article 14 of the Constitution of India In our considered view, there was no justification to confer such unlimited and unanalyzed power on the State Govt. It would not be safe to confer such powers on any executive authority. The provision, in our view, has led to serious inconvenience to the general public. There is no involvement of any public policy in refusing registration of Power of Attorney. The contention of the learned Advocate General that Section 22-A introduced by the Rajasthan Amendment Act, 1976 is perfectly legal and the powers conferred by this section cannot be said to be arbitrary

and that there are sufficient guidelines in Section 22-A to declare any document or class of documents to be opposed to public policy, cannot at all be countenanced. The discretion, as already noticed, confer upon the State Govt. in this regard is arbitrary and Section 22-A is liable to be struck down on this ground.

42. The submission made by the Advocate General that with a view to curb down the tactic of execution of Power of Attorney for a indefinite period in connection with any immoveable property in place of sale deeds, the impugned Notifications were issued has no merit. The Power of Attorney, as already seen, is only a power empowering a specified person to act for and in the name of the person executing it. The important factor in interpreting a Power of Attorney is the purpose for which it is executed. Where the Power of Attorney Holder was given power to sell properties of executant by applying sale proceeds of scheduled property, it would necessarily mean that he had power to execute the sale and convey proper title to the purchaser. The power to negotiate for sale of lands with the prospective purchasers for the best available price, conferred in Power of Attorney cannot be construed as Agreement to Sale of the property itself. As already seen, there is no provision of law by which a Special Power of Attorney becomes compulsorily registrable and that a Court is not bound to presume its genuineness unless it is registered. Likewise, restriction imposed namely that if a Power of Attorney is executed in favor of a person for a period of more than three years or for unlimited period, in our view, is also violative of Article 14 of the Constitution. So also, the Notification dated 22-3-1999 by which execution of the document by other than the Power of Attorney executed in favor of brother or sister or son or daughter or father or mother or husband or wife or grand son or grand daughter is declared opposed to Public Policy suffers from the vice of arbitrariness. The apprehension expressed by the State Govt. that in case, the Power of Attorney executed in respect of such properties in favor of the relations mentioned in the Notification, there will be no danger of the Seller being cheated by the vendor at a later stage, cannot at all be appreciated. The apprehension expressed by the State is nothing but imaginary. The legislation, in our view invades the right to deal with the property is wholly arbitrary and unreasonable. It must be held to be wanting in reasonableness. In our view, no public policy or public interest is involved in the Notification under challenge in the present case and in particular in registering a Power of Attorney. The Notifications Annexures 6 and 7 also offend Section 32 of Registration Act. Under the said section, a Power of Attorney has to be produced for registration in the office of the Sub-Registrar or the Registrar within whose

jurisdiction, the executor resides. The Notification compels the executor to go to the Sub-Registrar within whose jurisdiction the property is situated, therefore, it offends provisions of Section 32 of the Act and is void and arbitrary, as in our view, there is no reasonable basis for classification on the ground of situation of the property. The basis for classification referred to in Annexures 3,4,6 and 7 which in our opinion, have no relation to the object sought to be achieved. The period for the exercise of the power of transfer fixed by the person executing the Power of Attorney is a matter of contract between two persons and at no stretch of imagination, it can be said to be against public policy. As pointed out by Mathew,J. in the judment of *Murlidhar v. State of U.P.* (supra), public policy does not remain static in any given community and it may vary from generation to generation and even in the same generation and that the Judges are more to be trusted as interpreters of the law than as expounders of public policy; there is no alternative under our system but to vest this power with the Judges.

43. In view of aforesaid discussion, the provisions of Section 22-A of the Indian Registration Act as amended in Rajasthan as well impugned notifications Ex. 3,4,6 and 7 are liable to be held *ultra vires* and invalid.

Rajesh Balia, J.

44. I have had the advantage of perusing the order proposed by My Lord the Chief Justice and am in agreement with it. However, I too would like to state my reasons for the same in brief.

45. Section 22-A of the Registration Act as inserted in Rajasthan vide Act No. 16 of 1976 w.e.f. 13-2-76 reads as under :-

> "22-A. Documents registration of which is opposed to public policy.-(1) The State Govt. may, by notification in the Official Gazette, declare that the registration of any document or class of document is opposed to public policy.
> (2) Notwithstanding anything contained in the Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

46. A careful reading of the provision reveals that under the aforesaid provisions law delegates authority to State Govt. to declare registration of any document or class of

documents to be opposed to PUBLIC POLICY; and mandates that notwithstanding anything to the contrary in the Registration Act, the registering officer shall refuse to register any document to which a notification under sub-section (1) is acceptable. It nowhere authorises the delegate State Govt. to declare the transactions, which are so evidenced in such instrument, if otherwise permissible under law, and accords with substantive law governing such acts to be unenforceable or invalid. It is in this context the question of validity of the provision as well impugned notification issued thereunder are to be examined. This brings to the fore the consideration of concept of 'Public Policy' declaration of which is left to the delegate under Section 22-A.

47. In Black's Law Dictionary the expression 'Policy' and 'Public Policy' have been defined as under :

> "Policy. The general principles by which a government is guided in its management of public affairs, or the legislature in its measures.
> Public policy. That principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. The principles under which the freedom of contract or private dealings is restricted by law for the good of the community. The term "policy", is applied to a statute, regulation, rule of law, course of action, or the like, refers to its probable effect, tendency, or object, considered with reference to the social or political well-being of the State. Thus, certain classes of acts are said to be "against public policy," when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injuries to the interests of the State, apart from illegality or immorality."

48. In *Janson v. Driefontein Consolidated Mines Ltd.* [18] Lord Halsbury stated the principle -

> "a contract for marriage brokerage, the creation of a perpetuity, a contract in restraint of trade, a gaming or wagering contract, or, what is relevant here, the assisting of the King's enemies, are all undoubtedly unlawful things; and you may say that it is because they are contrary to public policy they are unlawful; but it is so because these things have been enacted or assumed to be by the common law unlawful, and not because Judge or Court have a right to declare that such and such things are in his or their view contrary to public policy. Of course, in the application of the principles here insisted on, it is inevitable that

> particular case must be decided by a Judge; he must find the facts and he must decide whether the facts so found do not come within the principles which I have endeavored to describe - that is, a principle of public policy recognized by the law, which the suggested contract is infringing, or is supposed to infringe."

49. According to Bouvier's Law Dictionary, Public Policy is that principle of law which holds that no subject can lawfully do that which has a tendering to be injurious to the public or against the public good; and that public policy is manifested by public acts, legislative and judicial, and not by private opinion, however eminent.

50. The Australian Jurisprudence has accepted the following principle on public policy as explained in Words and Phrases Legally Defined.

> "The Phrase 'public policy' appears to mean the ideas which for the time being prevail in a community as to the conditions necessary to ensure its welfare; so that anything is treated as against public policy if it is generally regarded as injurious to the public interest. . . . It is well settled that a contract is not enforceable if its enforcement would be opposed to public policy. . . . Public policy is not, however, fixed and stable. From generation to generation ideas change, as to what is necessary or injurious, so that 'public policy' is a variable thing. It must fluctuate with the circumstances of the time."

51. The above opinions gives out that public policy is not what individual opines but refers to acts which are permissible or not permissible by law, and whether particular act is or is not (sic).

52. The principle has been approved by Hon'ble Supreme Court in *Murlidhar v. State,* [19] as discussed by My Lord the Chief Justice that Public Policy is a principle of judicial legislation or interpretation on the anvil of law governing the acts of the parties to such acts in the context of current needs of the community.

53. In the aforesaid context first thing that is to be seen is that Section 22-A by itself does not prohibit anything to be done, nor it prescribes any action be declared against public policy by the State Govt. It only authorizes the State Govt. to declare 'registration of any document or class of the documents to be against public policy' and

directs the registering authority not to register such document, notwithstanding anything to the contrary in Registration Act. The first question that begs for an answer is that any act which is otherwise permissible by law other than Registration Act, in any particular manner, and is done in that manner, can it be subject-matter of notification by the State Govt. under Section 22-A. The answer must be in negative. Section 17(1) of the Registration Act describes several documents dealing with immovable property to be compulsorily registrable. It includes instruments of gift of immovable property, under clause (a); other non- testamentary documents which purports to operate to create, declare, assign, limit or extinguish, whether in the present or in future any right, title or interest of the value of one hundred rupees and upward to a immovable property under clause (b); lease of immovable property from year to year or for any term exceeding one year or serving yearly rent under clause (d). All these documents relate to various modes of transfer of immovable property, governed by Transfer of Property Act, which also requires such transaction to be carried out through registered instrument. These provisions remain unaffected by the privions of Registration Act. However, Section 22-A of the Registration Act makes it possible for the State Govt. to declare any of such documents, which are otherwise in accordance with substantive law of transfer and cannot be held to be opposed to public policy and forestall the registration of such documents, which can affect the very existence of such transaction, by not permitting it to be completed only for want of registration. No guideline whatever has been provided as to give a clue to the basis on which registration of any document whether compulsorily registrable or not compulsory registrable can be declared as opposed to public policy or what public good in involved in not allowing any document to be registered.

54. In the context of present case, the donning any person with the power of attorney is in the realm of contract of agency. The donor by executing a power of attorney creats an agency in favor of donee. The power of attorney is an authority whereby one is set in turn, stead, or place of another to act for him. The law of contract does not envisage any requirement of registration for appointing a power of attorney. The Power of Attorney Act, which provides for the manner in which donee of a power of Attorney may act in his own name (Section 2) effect on acts done by a power of attorney, which are done in good faith and *bona fide* or payments made in the event of death of the donor of Power of Attorney (Section 3), manner of depositing original instrument creating power of attorney with High Court or District Court and secure certified copy of it there from (under Section 4) and special provisions of power of attorney of any married women (under Section 5) also do not require the instrument of

any power of attorney to be registered. Thus under substantive law also power of attorney is not registrable, but is a document, registration of which is optional. Clause (g) of sub-section (1) of Section 17 also makes only an irrevocable power of attorney relating to transfer of property in any way as compulsorily registrable. No other form of power of attorney is compulsorily registrable. Other provisions of Registration Act which deals with Power of Attorney are Sections 32 and 33. Section 32 recognizes and enables duly authorized power of attorney to present the document to be registered, whether compulsorily or optional. Section 33 envisages that only such power of attorney shall be recognized for the purpose of presentation which are authenticated in the manner prescribed therein. Both the provisions do not require registration of Power of Attorney, Section 22-A does not operate on the field of authentication of a power of attorney. If a power of attorney is presented for authentication as required under Section 33, the Registrar has no authority to refuse to authenticate. Authentication of a document is entirely different concept and connotation than registration of a document. Object of Section 33 is only to ensure that only duly appointed Power of Attorney presents the document for registration. Thus, notwithstanding, a power of attorney is not required to be duly registered, and only an irrevocable power of attorney is required to be compulsorily registered, is an instrument to be registered only an option, by declaring its registration to be opposed to public policy, the power of deciding any act to be contrary to law has been conferred on the State Govt., that too to be reached subjectively and without guidelines, which as discussed above falls exclusively within the domain of Courts to determine by testing it on the anvil of law governing such action/actions is clearly unreasonable and arbitrary and amounts to abdicating its essential legislative functions to delegate to declare anything contrary to law, which is not contrary to law in fact, by an executive decree. This is not permissible in the framework of Constitution. For these reasons, Section 22-A of the Registration Act as enacted in Rajasthan must be held to be ultra vires.

55. The object of the Registration Act is to lend assurance to the genuineness to the existence of the document and minimum the possibility of creating anti-dated instrument of nascent transactions. The Registration Act does not require that a transaction effecting immovable property should be carried out by a registered instrument but the effect of the provisions of the Act is that such a document must be registered. That is to say that the policy behind the registration is not to affect the freedom of transaction but the manner of its manifestation. The object behind making any document compulsorily registrable is to lend credibility to the genuineness of the

factum of execution of a document and also to serve the purpose of public notice of the transaction. However, the object of the registration of a document does not travel beyond that.

56. It has been held in *Panchapagesa v. Kalyansundaram* [20] that the Registration Act unlike the Transfer of Property Act strikes only at documents and not at transactions. In the same way the Registration Act does not require that a transaction affecting immovable properties should be carried out by a registered instrument. The requirement that a sale of immovable property above Rs. 100 can only be made through a Registered instrument is requirement of substantive law of transfer. The above view was followed in *Kataimia v. Sukhamayee Chaudhurani,* [21] and *Syed Abdullah Sahib v. Rahmatulla Sahib,* [22] Viewed in that light, if Section 22-A is read, it clearly communicates that the law empowers the State Govt. to declare the act of registration of any document to be opposed to the public policy when the execution of any document, which is permissible under the law to be executed and the transaction itself cannot be held to be opposed to public policy. Therefore, declaring any document in furtherance of any transaction itself to be opposed to the public policy which results in affecting transactions is beyond the scope of the Registration Act itself. Section 22-A of the Act only authorizes to declare registration of any document to be opposed to the public policy and not the document or the transaction evidenced from the instrument to be opposed to the public policy. A transaction may be held to be opposed to public policy, not because it is registered or unregistered, but because the transaction that is carried through it, or the subject-matter it deals with is opposed to law or public policy manifested in any law. Non-registration of a document, required to be compulsorily registrable may render the transaction inoperative or incomplete until registered, but not opposed to public policy. Likewise where a transaction or act is completed by getting the document registered which is compulsorily registrable. Likewise such completion of modalities will by itself not make the transaction valid or conducive to public policy, if it is otherwise opposed to law.

57. If a document is compulsorily registrable and not registered, the document and transaction contained therein will remain inoperative, and the document itself (is) inadmissible in evidence to establish the substantive transaction. Thus, declaration of registration of such document to be opposed to public policy is of little consequence.

58. If a document is not compulsorily registrable, then the substantive transaction contained in the instrument becomes operative, even without it being submitted for registration. Non-registration will not render the instrument inadmissible nor it will render the transaction inoperative. In such event also declaring registration of such document against policy also serves no public purpose much-less public purpose. The effect of provision under Section 22-A as well as impugned notifications is that if a power of attorney, which is not required to be compulsorily registrable is executed and not offered for registration shall remain operative and valid, authority exercisable under it shall depend on ordinary law of proving the execution of document and its genuineness, notwithstanding it is for a period exceeding the period mentioned in the notification and notwithstanding it has been executed in favor of person other than named in the notification. But the very same document if produced for registration shall be branded as opposed to public policy. However, if presented for authentication, the declaration under Section 22-A cannot come in the way of authentication. For this reason also such a declaration in my opinion being opposed to substantive provisions of law, itself is against public interest and public policy.

59. The document which are executed in ordinary course of business evidencing transaction or interactions between the parties or any one of the parties according to its free will, like a Will, which are not made compulsorily registrable, the execution of such a document by itself cannot be said to be against the public policy. The execution of documents which are not prohibited by law and not required to be compulsorily registered, if so executed and produced before the registering authority, the registering authority is not authorised to hold an enquiry otherwise to examine the validity of the document and refuse registration. The law only envisages the registering authority to satisfy about the genuine identity of the executant and the factum of document admitted to be executed by him. If a document is executed by a power of attorney, the enquiry by the registering authority is to the identity of power of attorney under the said document, but not beyond it. Registration of a document executed by or presented for registration by a power of attorney, does not lend any support or affect the enquiry in any appropriate proceeding as to validity or extent of delegation flowing from such power of attorney under which he has acted. One fails to understand in refusing registration of such a document which has in fact come into existence and evidence the transaction which is according to law and such a transaction can even be carried out without registration, can in any case be opposed to the public policy.

60. I am of the opinion that the impugned Notification Annexures 3,4,6 and 7 are even beyond the scope of Section 22-A of the Act.

ORDER

61. The writ petition is allowed and Section 22-A of the Registration Act as inserted by Rajasthan Amendment Act, 1976 (Act No. 16 of 1976) is declared as unconstitutional and that the said section had all the features of deleterious and being violative of Article 14 of the Constitution of India.

62. Consequently, the Notifications Annexures 3,4,6 and 7 are quashed and the Sub-Registrar (respondent No. 3) is directed to register the Power of Attorney dated 16-7-1999 which was presented on 30-7-1999 within two weeks from the date of presentation of a copy of this order.

Order accordingly.

Cases Referred.

1. AIR 1988 SC 1089
2. (AIR 1954 SC 224)
3. AIR 1988 SC 1089
4. (1998) 8 SCC 188
5. AIR 1957 SC 397
6. (1996) 9 SCC-136
7. AIR 1971 SC 1924
8. AIR 1999 Raj 334
9. AIR 1954 SC 224
10. (1998) 8 SCC 188
11. (AIR 1957 SC-397)
12. {1996} 9 SCC 136 (AIR 1996 SC 2344)
13. (AIR 1940 Bom234)
14. (AIR 1956 SC 479)
15. (1996} 9 SCC 136
16. (1968 (3) SCR 251)
17. (1962 (2) SCR 169)

18. (1902) A.C. 484
19. AIR 1974 SC 1924
20. (AIR 1957 Mad 472)
21. AIR 1959 Ass 60
22. AIR 1960 Mad274