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HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 23.02.2021****Order Delivered on 07.05.2021****Writ Petition (PIL) No. 52 of 2020**

Dr. Rakesh Kumar Sharma S/o Shri Chandra Shekhar Sharma
Aged About 62 Years R/o Mahal Para Baikunthpur, Koriya,
District Koriya Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary Department of Home, Mahanadi Bhawan, Atal Nagar Nava Raipur, District Raipur Chhattisgarh.
2. State of Chhattisgarh Through Its Secretary, Department of Revenue, Mahanadi Bhawan, Atal Nagar Nava Raipur, District Raipur Chhattisgarh.
3. Director General Prisons And Correctional Services Indrawati Bhawan, Atal Nagar Nava Raipur District Raipur Chhattisgarh.
4. Jail Superintendent District Jail Baikunthpur, District Koriya Chhattisgarh.
5. Collector Koriya At Collectorate, Baikunthpur, District Koriya Chhattisgarh.
6. Additional Collector Baikunthpur, At Collectorate, Baikunthpur, District Koriya Chhattisgarh.
7. Tahsildar Baikunthpur, Tahsil Office Baikunthpur, District Koriya Chhattisgarh.
8. Municipal Council Baikunthpur Through Its Chief Municipal Officer Baikunthpur, District Koriya Chhattisgarh.
9. Sanjay Agrawal S/o Shri Mahangilal Agrawal Aged About 45 Years Director Maa Vaishno Associates, Resident of Ward No. 8, Baikunthpur, Police Station And Tahsil Baikunthpur, District Koriya Chhattisgarh.
10. Seema Agrawal W/o Shri Sanjay Agrawal Aged About 44 Years Resident of Ward No. 8, Baikunthpur, Police Station And Tahsil Baikunthpur, District Koriya Chhattisgarh.

---- Respondents

For Petitioner	: Shri Prasun Kumar Bhaduri, Advocate
For Respondent/State	: Shri Sudeep Agrawal, Dy. Advocate General
For Respondent No.8	: Shri Bhupendra Singh, Advocate
For Respondents No. 9 & 10:	Shri R.K. Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order

Per Parth Prateem Sahu, Judge

1. The petitioner who is resident of Baikunthpur city has filed this 'Public Interest Litigation' ('PIL') stating the issue raised in the writ petition to be with regard to 'land scam' whereby respondent No.9 got transferred the land in his name, which was recorded in the name of Jail Department in proceedings of exchange of land in revenue case No.04/A-19(4)/2013-14 by Additional Collector, Baikunthpur, District Koriya, Chhattisgarh without seeking consent of competent authority. The question involved in writ petition is whether the land recorded in the name of Jail Department in revenue records, the Deputy Superintendent of Jail would be the competent authority to give his consent for exchanging of land with private person and whether proceedings drawn by Additional Collector in revenue case for exchange of land under the provisions of Revenue Book Circular (for short 'RBC') are in accordance with law or not.

2. Relevant facts raised in this writ petition are that, land bearing Khasra Nos.252/1 and 298 are recorded in the name of Jail (Reserved for Jail). The land of aforesaid Khasra numbers lying adjacent to the present Jail was vacant and an open land. Other lands bearing Khasra Nos.149/1 and 153 situated at Jampara were also recorded in the name of Police Department. In part of these Khasra numbers 149/1 and 153, buildings of Police Department and

residential quarters are constructed and large area of aforesaid Khasra numbers is undeveloped and is lying open. Respondents No.9 and 10 are (in the business of real estate), engaged in the business of developing and constructing residential colonies. The land which is subject matter of writ petition is adjacent to the colony developed by them known as 'Mangi Lal Agrawal Nagar' popularly called as 'MLA Nagar'. Respondents No.9 and 10 purchased land bearing Khasra No.252/1 situated at Patwari Halka No.5 from one Uday Pratap Singh. As per description mentioned in the sale deed executed by Uday Pratap Singh in favour of respondent No.10, east side of land is bounded by land belonging to Jail and other sides of the land is bounded by lands of private persons. Respondent No.9 after getting permission from the competent authority, started developing colony over the land situated at Khasra No.252/1. Respondent No.9 in view of extension of colony situated at Khasra No.252/1 has made an application for exchange of land bearing Khasra No.149/1 measuring 0.548 hectares and Khasra No.153 measuring 0.429 hectares (total area 0.977 hectares), with the land situated at Khasra No.295 recorded in the name of Jail, which is adjacent to the land bearing Khasra No.252/1 where respondent No.9 was developing colony. Application for exchange of land was filed on 22.08.2013 before the Additional Collector Baikunthpur. Upon receiving the application for exchange, Additional Collector issued public notice inviting objection. When no objection was received, he called for a report from Tahsildar. Upon receiving report of Tahsildar, value of the lands, sought to be exchanged has been

ascertained from Deputy Registrar. No objection was sought from the Municipal Council who vide letter dated 08.11.2013 has stated that Khasra Nos.149/1 and 153 are occupied by the Police Department and Khasra No.295 is recorded as Government land. The Patwari Baikunthpur after inspection submitted its report that Khasra No.295 includes Khasra No.298/1 and both the lands are recorded and reserved in the name of Jail. The Collector passed an order permitting for exchange of land and directed for correction in the revenue records accordingly.

3. On 02.08.2017, Director General of Prisons and Correctional Services wrote a letter to Collector Koriya regarding illegal exchange of land of Jail Department. The Collector based on the letter had issued direction to Tahsildar to submit a report. The Tahsildar submitted report that land bearing Khasra Nos.295 and 298/1 is recorded in the name of Jail prior to Independence. Exchange of land as ordered on 19.12.2013 cannot be made under the RBC. He also recorded that land belonged to Jail can be exchanged with the consent of higher officer. On 29.12.2017, Superintendent of Jail given information to one Avinash Kumar Singh under the Right to Information Act, 2005 (for short 'RTI') mentioning that no competent officer of Jail Department ever gave consent for exchange of land bearing Khasra No.295 measuring 0.977 hectares in favour of Maa Vaishno Associates (respondent No.9).

4. The Petitioner stating that the order of Additional Collector granting permission for exchange of land dated 19.12.2013 on the

consent of Deputy Superintendent of Jail for exchange of land bearing Khasra No.295 to be illegal based on fraud, has filed this writ petition with following reliefs :

“10.1 That this Hon'ble Court may be pleased to summon complete records with respect to -

A. Revenue Case No.04/A-19(4)/13-14 from respondent nos.5 to 7.

B. Revenue Case No.124 (A-12)/2018-19 from respondent nos.5 to 7.

10.2 That this Hon'ble Court may be pleased to issue appropriate writ/order/direction/setting aside/quashing in public interest -

1. Entire proceedings in Revenue Case No.04/A-19(4)/13-14 **Annexure P/1(Colly)**.

2. Order dated 19.12.2013 in Revenue Case No.04/A-19(4)/13-14 issued by Additional Collector, Baikunthpur District Koriya **Annexure P/2**.

3. Letter No.134/Vachak/2014 Baikunthpur dated 31.01.2014 **Annexure P/3**.

4. Entire proceedings in Revenue Case No.124 (A-12)/2018-19 **Annexure P/4 (Colly)**.

10.3 That this Hon'ble Court may be pleased to issue appropriate writ/order/direction for initiation of criminal prosecution against the erring officers of the State Government and Respondent

no.8 under appropriate provisions of the Indian Penal Code, 1860 and also the provisions of the Prevention of Corruption Act, 1988 in public interest as also the court may direct initiation of criminal prosecution against respondent nos.9 and 10 under appropriate provisions of the Indian Penal Code, 1860 and also the provisions of the Prevention of Corruption Act, 1988.

10.4 That this Hon'ble Court may be pleased to issue appropriate writ/order/direction commanding removal of illegal occupation of respondent nos.9 and 10 from Khasra No.295/1-298 at Patwari Halka No.5, Revenue Inspector Circle Baikunthpur, Tahsil Baikunthpur, District Koriya (CG), the court may also direct for demolition of any structure standing (if any) on the said land in public interest.

10.5 That this Hon'ble Court may be pleased to issue appropriate writ/order/direction to the State Government to frame a strict policy with respect to maintenance and protection of its estates in public interest.

10.6 Any other relief this Hon'ble Court may be pleased to grant in the facts and circumstances of this case.”

5. Respondent No.9 submitted reply to the writ petition pleading therein that petitioner has intentionally suppressed the material facts in the writ petition and he has not approached before the Court with clean hands. It is pleaded that on the basis of complaint made by

the then Minister, an inquiry was directed by Chief Secretary of the State to the Commissioner. The Commissioner called for the report of Deputy Commissioner (Revenue) Surguja Division. In the report submitted by Deputy Commissioner (Revenue), it was concluded that exchange of land was ordered in accordance with law. It is further pleaded that after filing of application for exchange of land dated 22.08.2013, Additional Collector, Koriya issued public notice, called for the report from Subordinate Revenue Officer as also called for market price of both the lands sought to be exchanged. The letter was sent to Deputy Superintendent of Jail on 02.11.2013 seeking consent, upon which, Deputy Superintendent of Jail replied vide letter dated 08.11.2013 and given his consent. No objections were sought from the competent authority, one of which is the Municipal Council. Report of Patwari was also sought for and after considering the entire materials/reports and consent of competent authority, passed an order permitting for exchange of land vide order dated 19.12.2013. The order was passed after complying all the procedures prescribed strictly in accordance with law. Chief Secretary upon receiving letter of Sitting MLA and the then Minister of the State, wrote a letter to Deputy Commissioner (Revenue) Surguja Division to conduct an inquiry and to submit report. The Deputy Commissioner (Revenue) conducted an inquiry, issued notice to respondent No.9 for appearing and participating in the inquiry. He submitted report on 18.07.2017 mentioning therein that order of exchange of land was passed after obtaining consent. The Commissioner (Revenue) after getting report by Deputy

Commissioner (Revenue) has further called for report from respondent No.5. The Commissioner after getting reports has written a letter to the Chief Secretary mentioning that some points have not been considered while passing the order of exchange and further mentioned that respondent No.5 has been directed for review of order dated 19.12.2013 under Section 51 of the Chhattisgarh Land Revenue Code, 1959 (for short 'Code of 1959'). The review application filed before the Board of Revenue came to be dismissed. The order of exchange of land is passed strictly in accordance with the provisions of law. For ownership of land, entries in the revenue records is to be taken as conclusive proof, till such entries are controverted. Lands bearing Khasra Nos.149/1 and 153 are in unauthorized possession of Police Department. Petitioner is stressing upon the enquiry report of respondent No.7 to point that exchange of land was illegal. Respondent No.7 only to find fault in the proceedings conducted by superior had recorded a finding that land bearing Khasra No.295/1-298 does not belong to State Government. Land of Khasra No.295/1-298 is in the title rights of the Jail Department. Land was not a Government land, therefore, it could not be exchanged under the relevant provisions of the RBC. Only on the basis of one report submitted by the Tahsildar, petitioner has filed this writ petition suppressing other reports and orders of the superior revenue authorities. The writ petition filed is activated by malafide. It is further pleaded that petition be dismissed with exemplary cost.

6. Respondents No.1 to 7/State submitted its reply stating that

after registering revenue case, Additional Collector passed an order for exchange of land. Commissioner Surguja Division directed the Collector to file review application before the Board of Revenue. The letter dated 02.08.2017 was addressed by Director General of Prisons and Correctional Services, State of Chhattisgarh to Collector Koriya requesting to conduct an inquiry with regard to exchange of land. Based on the letter dated 02.08.2017, inquiry was conducted by the Collector Baikunthpur wherein a report has been called for and submitted by Tahsildar stating that the subject land is recorded in the name of Jail, hence, prima facie it could not be subjected to exchange with private land under the RBC and proceedings to be not correct. The Collector filed review application under Section 51 of the Code of 1959 before the Board of Revenue. The application for review of order dated 19.12.2013 was dismissed. Respondents No.1 to 7 placed reliance upon the judgment passed by Hon'ble Supreme Court in case of **Parkash Singh Badal and Another v. State of Punjab and Others** reported in **(2007) 1 SCC 1**, **Rajib Ranjan and Others v. R. Vijay Kumar** reported in **(2015) 1 SCC 513** and **D. Devaraja v. Owais Sabeer Hussain** reported in **(2020) 7 SCC 695**.

7. Petitioner submitted rejoinder to the reply filed by the State as well as reply of private respondents. In rejoinder, petitioner has pleaded that he has tried to expose the fraud played by respondent No.9 for getting lands of Jail situated near/adjacent to existing Jail, in which, revenue authorities are also involved. The land recorded in the name of Police Department has been projected by the private

respondents to be owner of land at Jampara and got the same exchanged against the law. Respondents No.1 to 7/State even after bringing to their knowledge the fraud committed, are sitting tight over it. They are interested in protecting the rights of respondent No.9. Document (Annexure R/24) is not inspiring confidence. This document has to be read along with document (Annexure P/29) attached with the writ petition issued by Superintendent of District Jail. Jail Superintendent is the final authority to give consent with the land of Jail Department under the Prisons Act, Jail Manual and Regulations. The Board of Revenue has rejected the prayer for review of order by its order dated 20.06.2018 without taking into consideration the competency of Deputy Superintendent of Jail of giving his consent for exchange of land recorded in the name of Jail by recording that Deputy Superintendent of Jail is the senior most officer, which is completely incorrect in view of hierarchy of the Jail Department. Even if, some order has been passed by Board of Revenue, this Court can consider the issue in the PIL where the exchange of land is illegal and is malicious. The order passed by Additional Collector on 19.12.2013 for exchange of land is illegal from its inception. The petitioner placed his reliance on the ruling rendered by Hon'ble Supreme Court in case of **Nazir Ahmad v. King-Emperor** reported in **(1936) AIR (PC) 253 Privy Council** (arising out of land acquisition proceedings), **Meera Sahni v. Lieutenant Governor of Delhi and Others** reported in **(2008) 9 SCC 177** and **State of Orissa and Another v. Mamata Mohanty** reported in **(2011) 3 SCC 436** on employment and service matters.

8. Respondents No.1 to 7/State has not answered the very specific ground raised by the petitioner on the basis of letter written by Jail Superintendent wherein it is mentioned that no letter/consent has been taken and given by the Department. Respondents No.1 to 7/State has not filed any specific reply in this regard. The facts which have not been specifically denied in the affidavit shows that letter of Superintendent of Police remains uncontroverted and placed his reliance on the ruling rendered by Hon'ble Supreme Court in case of **Hazara Singh Gill v. The State of Punjab** reported in **AIR 1965 SC 720 (V 52 C 122)**.

9. Shri Prasun Kumar Bhaduri, learned counsel for the petitioner submits that application for exchange of land was filed by the private respondents vide application dated 22.08.2013 before the Additional Collector for exchange of private land with the land recorded in the name of Jail. Earlier, Jail Department and Police Department are one and the same, but presently, both the Departments have been separated, but are under the Home Department. The case was registered under the RBC. In the report called from the Patwari, it is mentioned that Khasra Nos.149/1 and 153 belongs to Police Department and Khasra Nos.295/1 and 298 belong to Jail Department. Respondents No.9 and 10 have not submitted any document of title of land claimed by them over Khasra Nos.149/1 and 153 to be their private land. Khasra Nos.295/1 and 298 are the lands situated adjacent to Jail and recorded in the name of Jail. The spot inspection report submitted was with respect to land bearing Khasra Nos.295/1 and 298 mentioning it to be recorded in the name

of Jail. On the basis of records, land bearing Khasra Nos.149/1 measuring 0.548 hectares and 153 measuring 0.429 hectares is in possession of Police Department and recorded in the name of respondent No.9. The order of exchange of land has been passed on the basis of no objection/consent letter issued by Deputy Superintendent of Jail, who is having no authority under the law. The authority is the Director General of Police (Prison) with prior discussions with the Councils of Minister., Superintendent of Jail had issued letter on 29.12.2017 under the RTI that no consent for exchange of land is given as mentioned in Annexure P/29. The reply filed by the State is supported by the affidavit of Sub Divisional Officer (Revenue) without co-ordination and concurrence of Superintendent of Jail. Looking to the complaint received with regard to land scam, the then MLA has written a letter to Chief Secretary for getting the issue inquired. The Chief Secretary forwarded the complaint to Commissioner Surguja Division. Private respondents have not initiated any proceeding for getting the possession of those lands after execution of sale deed, if any. Based on the letter forwarded to Commissioner, the Commissioner directed the Collector for submission of report, who in turn, directed Tahsildar for submission of its report. The Tahsildar submitted his report mentioning that lands bearing Khasra Nos.149/1 and 153 have been shown to be in possession of the Police Department, but the lands belonging to Khasra Nos.149/1 and 153 are lying vacant. Neither Police Department nor other Government Department is in possession on that land and there is no proof of the same. Earlier,

land recorded in the name of Jail was proposed for construction of office of Collector, but in absence of agreement with the Jail Department, office of Collector has been established elsewhere. He further submits that Tahsildar has also mentioned in the report that Jail Department is different than the Police Department. It is contended that under the RBC, Collector can pass an order of exchange of cultivable agricultural land to the private land owner with the same value of land. Respondents are not agriculturists, hence, land recorded in the name of Jail Department cannot be given in exchange by invoking the clause under RBC. It is further contended that entire proceedings of filing of application for exchange of land is preplanned and proceedings have been concluded without taking proper consent of the competent authority of the Department in whose name, land was recorded. The consent mentioned in the order passed by Additional Collector of exchange of land is by the Deputy Superintendent of Jail who is not the competent authority. Proceedings are not available with the Department or in the office of the Superintendent of Jail of forwarding any letter of consent/no objection. The proceeding from the inception is based on the no objection given by the authority not competent. It is the case of the Department that no consent was ever given, hence, the proceedings of exchange of land drawn by Additional Collector is *per se* wrong and illegal. He submits that Annexures P/1 to P/4 be quashed. He places his reliance on the rulings rendered by Hon'ble Supreme Court in case of **Nazir Ahmed** (supra), **Hazara Singh Gill** (supra) (paragraphs 3 and 4), **M.I.**

Builders Pvt. Ltd. v. Radhey Shyam Sahu and Others reported in **(1999) 6 SCC 464** (paragraph 33), **Dr. B. Singh v. Union of India and Others** reported in **(2004) 3 SCC 363** (paragraph 14) and **Noida Entrepreneurs Association v. Noida and Others** reported in **(2011) 6 SCC 508**.

10. Per contra, Shri Sudeep Agrawal, learned Deputy Advocate General for the State submits that submission made by learned counsel for the petitioner that there was no co-ordination and concurrence between the Revenue Department and Police Department is not correct. Before filing of reply, submission of Jail Superintendent was called for. After receiving letter dated 02.08.2017 from Director General of Prisons and Correctional Services of State of Chhattisgarh stating some anomaly in the proceedings drawn by Additional Collector, inquiry was directed. The Collector, in turn, has directed Tahsildar vide letter dated 28.08.2017 for submission of his report with regard to land bearing Khasra No.295/1. After coming to the notice of the State that order passed by Additional Collector dated 19.12.2013 to be not, in accordance with law, State filed review petition before the Board of Revenue, which came to be dismissed. He further submits that Superintendent of Jail is the competent authority to give consent. During the course of hearing, Shri Agrawal admitted that Deputy Superintendent of Jail is not having any authority to give consent/no objection for exchange of land recorded in the name of Jail.

11. Shri R.K. Gupta, learned counsel for respondents No.9 and 10

submits that one of the issues raised in the writ petition is that respondents No.9 and 10 have not filed any document to show the title over land bearing Khasra Nos.149/1 and 153 and that, there was no consent from competent authority of Jail Department for exchange of land bearing Khasra Nos.295/1 and 298 recorded in the name of Jail. Name of answering respondents is recorded in the Khasra Nos.149/1 and 153 as owner. Khasra entries or entries made in the revenue records are conclusive proof of title. It is contended that respondents have filed an application before the competent authority i.e. Additional Collector for exchange of land. The Collector after drawing proceedings in accordance with law, sought opinion from the different authorities. It was also opined that there was no loss of land to Department. The revenue records mention 'Jail' as owner, which means it is a Government land. It is further contended that no specific authority is prescribed for giving consent for exchange of land, because exchange of land is not in a routine manner. Prior proper consent was obtained by Jail authority vide Annexure R/19-7. The petitioner has not placed on record documents of entire proceedings and has suppressed the material facts. It is also contended that value of land sought to be exchanged by the answering respondents with the land belonging to Jail is of same value, which is certified by competent authority i.e. Deputy Registrar of Registration Department. The submission that the land is not agricultural land, hence, no order under the provisions of RBC could be passed, at the most, can be said, an irregularity and not illegality. The land bearing Khasra Nos.149/1 and 153 was

purchased by respondents No.9 and 10 in the year 2013. Referring to the reply/report of Deputy Commissioner, it is argued that Deputy Commissioner has found the proceedings initiated by the Collector for passing an order of exchange of land to be in accordance with law. He further argued that Commissioner has called for clarification on three points based on the report of Deputy Commissioner. PIL cannot be filed as an appeal to any other proceedings. In this case, State has already filed an application for review of the order passed by the Additional Collector, which was dismissed by Board of Revenue, hence, this writ petition is not maintainable. He submitted that there is no specific clause mentioned in the RBC that land coming within the jurisdiction of Municipal area, cannot be made part of proceedings of exchange under the provisions of RBC. He places his reliance on the ruling rendered by Hon'ble Supreme Court in case of **Ashok Kumar Pandey v. State of W.B.** reported in **(2004) 3 SCC 349** (paragraphs 12 to 16) and **State of Uttaranchal v. Balwant Singh Chaufal and Others** reported in **(2010) 3 SCC 402** (paragraphs 143 to 150, 155, 158, 172 and 176).

12. Shri Bhupendra Singh, learned counsel for respondent No.8/Municipal Council submits that it is dispute between the Department of Jail and private respondents. No specific allegation is levelled against respondent No.8. Respondent No.8 is not having any vital role in the proceedings drawn by Additional Collector for exchange of land. No objection given is a formal one. The State could have challenged the order of Board of Revenue in writ petition, which was not done.

13. Shri Prasun Kumar Bhaduri, learned counsel for the petitioner submits that Respondents No.1 to 7/State has not placed on record entire documents. The documents collected by the petitioner shows collusion between respondents No.9 and 10 with the Government authorities. Instant PIL is filed only to protect the land of Jail Department from illegal allotment to private persons in an illegal proceeding.

14. Shri R.K. Gupta, learned counsel for respondents No.9 and 10 submits that after getting land on exchange, respondents No.9 and 10 have developed the same by constructing houses and structures and sold to other persons, hence, while passing the order in writ petition, present status of land be considered.

15. We have heard learned counsel for the respective parties and perused the pleadings and documents placed on record.

16. The grievance projected in the PIL is that the land recorded in the name of Jail is given in exchange to respondents No.9 and 10 by Additional Collector without following due procedure and obtaining no objection/consent from the competent authority of the Jail Department. The documents available on record would clearly show that on 12.06.2017, Sitting MLA and Hon'ble Minister of the State wrote a letter to Chief Secretary, State of Chhattisgarh for conducting inquiry on the exchange of land made in favour of Sanjay Agrawal. In the letter, it is specifically mentioned that only on the basis of proceedings drawn by one party, Additional Collector has passed an order on 19.12.2013 for exchange of land. It is further

specifically mentioned that exchange of land is not valid, but it is collusive. Based on the letter written of the then Hon'ble Minister, Chief Secretary vide letter dated 19.06.2017, issued direction to the Commissioner Surguja Division for initiating appropriate proceedings. The letter filed along with reply of the State dated 02.08.2017 also shows that Director General of Prisons wrote letter to the Collector and District Magistrate mentioning therein that a complaint is received alleging illegal transferring land 2.44 acres of land of Jail, Baikunthpur in the name of Sanjay Agrawal and to get the enquiry conducted by revenue officer and submission of report. Based on the letter written by Chief Secretary, Commissioner submitted its report on 19.07.2017 mentioning therein that on spot, land bearing Khasra Nos.149/1 and 153 is in possession of Police Department with the fencing of barbed wire. The part of land bearing Khasra No.s 295/14 and 298 is given in exchange and recorded in the name of Sanjay Agrawal by virtue of order passed by Additional Collector. The value of both the lands are equal. The Collector has obtained prior consent of the Jail Department and no other person is having objection on the exchange of land, has concluded that the order passed by Additional Collector for exchange of land to be in accordance with law and there is no procedural fault. The Commissioner has further written a letter to the Collector on 20.07.2012 whether Sanjay Agrawal has initiated any proceeding for getting the possession of land owned by him, but in possession of Police Department. The proceedings drawn by Naib Tahsildar of correction of entries to be inquired. The Collector based on letter,

conducted an inquiry and submitted its report mentioning therein that name of Sanjay Agrawal is recorded based on the sale deed dated 07.05.2013. Sanjay Agrawal has not initiated any proceeding for getting possession of land purchased by him, which is said to be in possession of Police Department, hence, no proceedings for handing over the possession of the land was drawn and further that, vide notification dated 06.10.2010, Municipal Council Baikunthpur was constituted. The inquiry directed by the Collector vide letter dated 28.08.2017 by the Tahsildar, which is filed as Annexure R/9-26, would show that land bearing Khasra Nos.295/1 and 298 is recorded in the name of Jail and is revenue paid land, hence, *prima facie*, exchange of land under the provisions of 4(3) of the RCB is not correct. The land situated at Jampara bearing Khasra Nos.149/1 and 153 measuring 0.548 hectares and 0.429 hectares respectively, is vacant on spot and there is no proof of possession of Police Department or any other Government Department.

17. After getting the report of Tahsildar dated 11.09.2017 Annexure R/9-26 proceeding was filed, by Additional Collector Baikunthpur seeking permission of review of the order dated 19.12.2013 passed in favour of private respondents which was rejected by the Board of Revenue Chhattisgarh Bilaspur vide order dated 20.06.2018. The respondent/State or the respondents No.3 and 4 who are officers of the Jail Department which is recorded owner of land have not taken any steps further. This writ petition is filed by the petitioner on 16.03.2020 as 'Public Interest Litigation.

18. Before considering the merits of the case, we find it appropriate to first deal with the objection raised by learned counsel for respondents with regard to maintainability of the writ petition in its form and in view of the subject matter and issue raised in the petition.

19. The issue raised in this 'Public Interest Litigation' is the allotment of land recorded in name of Jail in revenue records to respondents No.9 and 10 by way of exchange of land. Before passing an order of exchange of land competent authority in a proceeding had not issued notice to competent authority of Jail Department but to incompetent authority i.e. Deputy Superintendent of Police and on his no objection passed an order of exchange of land of Jail Department with land of respondents No. 9 and 10.

20. Whether the issue raised in this PIL involves 'Public Interest' for invoking jurisdiction under Article 226 is the question to be considered in view of the objection raised by the respondent. It is the case of the petitioner that the land given in exchange to the private respondent, by drawing a proceeding without consent of competent authority of the Jail Department, of the land recorded in he name as 'Jail' in revenue record. Contention of the petitioner is that the land was of Jail Department.

21. In view of the case projected by the petitioner itself the land exchanged with private land is not the land reserved for public use or public purpose i.e. for play ground, Garden, Hospital, Community Hall, reserved as abadi land for road or for any other public use. By

allotment of the land in the subject matter rights of any of the public or society is not affected. The petitioner could not point out any legal bar for giving the land in question under exchange to private person but for the ground that the proceeding drawn is erroneous. The consent given is by incompetent authority.

22. Powers of High Court under Article 226 of the Constitution of India are very wide. By exercising the powers under Article 226 of Constitution of India High Court can entertain the petitions filed as Public Interest Litigation relating to the issue of public importance like ecology, environment, forest and allotment of lands reserved for public propose or any other issue causing public injury, violating fundamental rights of public at large, petition filed seeking relief for rights of poor persons of marginalized society or any group of persons. The Court can refuse to entertain when the petition is not attracting the above like causes.

23. The Hon'ble Supreme Court in case of **Subhash Kumar v. State of Bihar and Others** reported in **(1991) 1 SCC 598** has held thus :-

“7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers

or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioner from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the

purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation. See *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161; *Sachindanand Pandey v. State of West Bengal*, (1987) 2 SCC 295; *Ramsharan Autyanuprasi v. Union of India*, (1989) Supp (1) SCC 251 and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449.”

24. Hon'ble Supreme Court in case of **Janata Dal v. H.S. Chowdhary and Others** reported in (1992) 4 SCC 305 has the meaning and relevance of word Public Interest Litigation and held thus :-

“53. The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present-day context in

modern society, a few of which we will refer to in the appropriate part of this judgment.

54.Thus the concept of PIL which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records, especially in the arena of constitutional and legal treatment for 'the unrepresented and under-represented'.

58. The seed of the concept of PIL were initially sown in India by Krishna Iyer, J. in 1976 (without assigning the terminology) in *Mumbai Kamgar Sabha v. Abdulbhai*, (1976) 3 SCC 832, he while disposing an industrial dispute in regard to the payment of bonus, has observed :

Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical mis-descriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who

wish to bypass the real issues on the merits by suspect reliance on peripheral procedural short comings. Even Article 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law.

98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”

25. In case of **Ramsharan Autyanuprasi and Another v. Union of India and Others** reported in **1989 Supp (1) SCC 251**, Hon'ble

Supreme Court held thus :-

“12. In the aforesaid view of matter, we are of the opinion that the petition under Article 32 of the Constitution is not maintainable. On the facts as appearing from the pleadings it cannot be predicted that there is any breach of any fundamental right of the petitioners. We are fortified by this conclusion by the fact that in view of the nature of the allegations made in the present context, it is a case which is more amenable to be proceeded under Sections 37 & 38 of the Rajasthan Public Trust Act, 1959, as amended from time to time. These provisions correspond, more or less, to Sections 91 and 92 of the Code of Civil Procedure.

15. In that view of the matter, resort to Article 49 was not just. We think that invocation of the jurisdiction of this Court as a public interest litigation, in the background of the allegations made in the petition and in the context of this case, was wholly unjustified. Public interest litigation is an instrument for the administration of justice to be used properly in proper cases. Public interest litigation does not mean settling disputes between individual parties. This Court in *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, dealt with this question and Justice Bhagwati, as the learned Chief Justice then was, observed that public interest litigation is not in the nature of adversary litigation but it is

a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice which is the signature tune of our Constitution. He reiterated that the Court entertain public interest litigation, not in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. In the same decision it was observed by Justice Pathak, as the learned Chief Justice then was, that public interest litigation in its present form constitutes a new chapter in our judicial system, acquiring a significant degree of importance in the jurisprudence practised by our courts. The learned Judge deprecated individual communications and suggested that all communications and petitions invoking the jurisdiction of the Court, must be addressed to the entire court, that is to say, the Chief Justice and his companion Judges. Judged by that standard, this petition does not seek to advance any public right. It seeks to exploit

private grievances. Indeed, in a situation of this nature it is well to bear in mind the observations of the tailpieces in the decision in *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295, where the learned Judge highlighted the necessity to delineate the parameters of public interest litigation. The Learned Judge noted that today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must, however, inspire confidence in courts and among the public, and must be above suspicion. Hence, it is imperative to lay down clear guidelines and outline the correct parameters for entertaining such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation along with justice will suffer. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. The learned Judge in the context of that case ended his judgment with a question: "Is there something more than what meets the

eye in this case?". The answer in the instant case is obvious - there is very much more than what meets the eye in the instant case before us. This application must, therefore, fail and is accordingly dismissed."

26. In case of **Dattaraj Nathuji Thaware v. State of Maharashtra and others** reported in **(2005) 1 SCC 590**, Hon'ble Supreme Court held thus :-

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked

by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in the *Janta Dal v. H.S. Chowdhary*, (1992) 4 SCC 305 and *Kazi Lhendup Dorji v. CBI*, (1994) Supp (2) SCC 116. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India*, (AIR 1993 SC 852) and *K.R. Srinivas v. R.M. Premchand*, (1994) 6 SCC 620).

5. It is necessary to take note of the meaning of the expression 'public interest litigation'. In Stroud's Judicial Dictionary, Vol.4 (4th Edn.), 'Public Interest' is defined thus :

"Public interest- (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity

or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected....."

6. In Black's Law Dictionary (6th Edn.), "public interest" is defined as follows :

"Public Interest.- something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must

be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”

27. In case of **State of Uttaranchal v. Balwant Singh Chaufal and others** reported in **(2010) 3 SCC 402**, Hon'ble Supreme Court has held thus :-

“36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest

litigation because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.”

28. Hon'ble Supreme Court in the aforementioned rulings has held that Public Interest Litigation to be genuine Public Interest, not a publicity petition, politically motivated by third party, private interest or with any other motive. Petition raising the ground infringing fundamental rights of group of person.

29. In the light of the aforementioned rulings of the Hon'ble Supreme Court, if the facts of the case and issue raised are considered, it does not reveal that the order under challenge is affecting public at large or group of persons in any manner. There is no infringement of any fundamental right of the citizen. No rights of any person belonging to lower strata or weaker section of the society is affected, no relief is claimed for the deprived and vulnerable section of the society or community.

30. In the case at hand, the issue raised is allotment of land of Jail Department under exchange to private respondents, drawing proceedings by the competent authority but the proceeding to be irregular. After bringing to the notice of the concerned department, the department had initiated some proceeding based on which authority who passed an order of exchange of land sought for review of the same which came to be rejected. The land which was given on exchange was of the Jail Department of the State Government, it does not fall within the category of poor, down trodden or vulnerable section of the society. The respondents No. 3 and 4 are competent enough to protect their own interest by drawing appropriate proceedings. No public right is affected, no public interest is involved in writ petition, hence, we are refraining ourselves from entertaining the writ petition and deciding the ground raised on merit. The petition in its form is not maintainable, accordingly it is dismissed. It is made clear that we have considered only the maintainability of the public interest litigation in its form and have not considered the merits of the issue raised in this petition.

31. The respondents No.3 and 4 will be at liberty to approach before appropriate forum by filing appropriate proceedings available to them under the law, if they so desire.

32. For the foregoing reasons, writ petition stands dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge