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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: **06.11.2023**

+ **LPA 112/2020 and CM Appl.7011/2020, CM Appl. 7013/2020**

NIRMAL TOWER BUILDING PVT LTD Appellant

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Appellant : Mr Anurag Pratap, Adv.

For the Respondent : Mr T.P. Singh, Adv. for R-1/UOI.

Mr Jai Sahai Endlaw, Mr Karan Kumar and
Mr Ashish Kumar, Advs. for R-2.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Appeal has been filed by the Appellant impugning order dated 18.09.2019 [hereinafter referred to as "Impugned Order"] passed by the learned Single Judge wherein an Application filed by Respondent No.2 [hereinafter referred to as "CEPCO"] under Order I Rule 10 CPC seeking a reference in proceedings under Sections 30 and 31 of the Land Acquisition Act, 1894 [hereinafter referred to as "LA Act"] was allowed.

1.1 By the Impugned Order, the learned Single Judge has set aside the order dated 02.06.2016 passed by learned Additional District Judge, Patiala House Courts, New Delhi [hereinafter referred to as "Trial Court Order"].



1.2 The facts briefly are that CEPCO, earlier known as Cycle Equipment Pvt. Ltd., purchased a property admeasuring 1500 sq. yds. at 26, Barakhambha Road, New Delhi-110002 by a Sale Deed registered on 30.03.1971 [hereinafter referred to as the "said Property"]. A portion of this property [approximately 317.81 sq. mts.] was acquired through a notification dated 28.03.2003 for the purpose of constructing the Barakhambha Road Metro Station [hereinafter referred to as "acquired land"].

1.3 It is the case of CEPCO that CEPCO had no knowledge of these proceedings until after the Award dated 30.06.2004 was passed by Land Acquisition Collector [hereinafter referred to as "Collector"] and immediately, upon becoming aware thereof, preferred an Application on 03.06.2005 seeking to challenge the apportionment of the compensation awarded.

1.4 CEPCO's Application under Sections 30 and 31 of the LA Act was dismissed by the Collector on 21.09.2006 on the ground of delay and in view of the fact that after the passing of the Award, the Collector had become '*functus officio*'.

1.5 CEPCO then filed an Application under Order I Rule 10 CPC before the learned ADJ for impleadment in the proceedings already pending under Sections 30 and 31 of the LA Act filed by Appellant [hereinafter referred to as "Nirmal Towers"].

1.6 CEPCO's application met the same fate before the Trial Court as it did before the Collector, as its Application for impleadment was dismissed by learned ADJ.



1.7 Impugning the orders dated 21.09.2006 and 02.06.2016, CEPCO filed a Petition under Article 226 read with Article 227 of the Constitution of India, 1950. The learned Single Judge by the Impugned Order allowed the CEPCO's Application for impleadment. It is against this order dated 18.09.2019 passed by the learned Single Judge that the present Appeal has been filed by Nirmal Towers.

2. A Coordinate Bench of this Court by its order dated 07.09.2021, stayed the operation and implementation of the Impugned Order.

2.1 By Order dated 04.04.2022, notices were issued to the Respondent Nos. 3 to 22. Order dated 23.05.2022 records presence of Counsel for Respondent Nos. 3 to 22. However, none has appeared thereafter for Respondent Nos. 3 to 22.

2.2 Arguments were addressed only on behalf of CEPCO and Nirmal Towers and written submissions were filed by both.

3. Learned Counsel who appears on behalf of Nirmal Towers has challenged the Impugned Order contending:

- (i) CEPCO has no right, title or interest in the acquired land. The recitals of the sale deed which was registered on 30.03.1971, state that said Property was purchased for and on behalf of Nirmal Towers, making Nirmal Towers its beneficial owner.
- (ii) It is settled law that if an immovable property is purchased for a company by its promoters prior to incorporation of such company, the title in relation to the property passes on to the company once incorporated, as has been held in *Jai Narain Parasrampur & Ors.*



*v. Pushpa Devi Saraf & Ors.*¹. The ratio is applicable to the present case as well.

- (iii) Since, CEPCO's Application under Sections 30 and 31 of the LA Act was dismissed and no Application under Section 18 of the LA Act was filed, CEPCO cannot be impleaded as a new party before the Reference Court. Reliance was placed on the judgment of the Supreme Court in the case of *Shyamali Das v. Illa Chowdhry*² and *Ajjam Linganna v. Land Acquisition Officer*³ to submit that there is a complete bar on the Reference Court adding a party under Order I Rule 10 CPC in proceedings under Section 30 and 31 of the LA Act.
- (iv) CEPCO has in various proceedings concerning the said Property submitted that it has no concern with the plot or building and that Nirmal Towers is the real owner of the said Property. These include proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 initiated in 2001, proceedings before Land and Development Office and proceedings before the Company Law Board which were contested by Nirmal Towers alone.
- (v) The learned Single Judge had erred in holding that the Collector made a reference to the District Judge under Sections 30 and 31 of the LA Act when in fact, the Collector had dismissed CEPCO's Application under Sections 30 and 31 of the LA Act.
- (vi) CEPCO did not file an Application under Section 18 of the LA Act but under Sections 30 and 31 of the LA Act. This was rejected on the

¹ 2006 (7) SCC 756

² (2006) 12 SCC 300

³ (2002) 9 SCC 426



ground of delay. Limitation is prescribed for proceedings under Section 18 of the LA Act, which has already expired, hence CEPCO cannot be impleaded.

- (vii) Relying on the judgment of the Supreme Court in ***Ram Prakash Agarwal v. Gopi Kishan***⁴, it was submitted that the Supreme Court has held that a when person has not made an application before the Collector for making a reference under Section 18 or 30 of the LA Act, he cannot get himself impleaded directly before the Reference Court.

4. Learned Counsel who appears on behalf of CEPCO has contended the following:

- (i) At the outset, an objection has been raised by CEPCO on maintainability of the present Appeal submitting that since the Impugned Order was passed in exercise of this Court's supervisory jurisdiction under Article 227 of the Constitution of India, no Appeal lies against such order to a Division Bench of this Court. Reliance was placed on the judgment dated 29.07.2011 passed by a Full Bench of this Court in the case of ***C.S. Agarwal v. State & Ors.***⁵, to submit that Clause 10 of the Letters Patent Appeal debars the filing of intra-court Appeal where the Court has exercised its supervisory jurisdiction.
- (ii) Reliance was also placed on a judgment dated 19.07.2007 passed by a Full Bench of Madhya Pradesh High Court in the case of ***Jaidev***

⁴ 2013 (5) Scale 670 : (2013) 11 SCC 296

⁵ 2011 SCC OnLine Del 3136



*Siddha (Dr.) and Ors. v. Jaiprakash Siddha and Ors.*⁶ to submit that when the High Court has not only quashed or set aside the impugned proceedings, judgments or orders, but has also made such directions as the case may warrant, by way of guiding the inferior court as to the manner in which it would now proceed further or afresh, then it is an exercise of power of superintendence, and in that regard, no Appeal lies.

- (iii) CEPCO had no knowledge of either the acquisition proceedings before the Collector or the proceedings before the learned ADJ as no notice was ever served to it and hence, its claims and objections could not be filed before the Collector. Once CEPCO gained knowledge of the Award, it filed an Application dated 06.06.2005 seeking apportionment of the compensation awarded.
- (iv) By order dated 21.09.2006, the Collector rejected the Application made by CEPCO. Thereafter, an Application to be impleaded as a party was filed by CEPCO under Order I Rule 10 CPC before the learned ADJ where a reference was already pending. The Appeal premises itself on an incorrect contention. Nirmal Towers has wrongly contended that the Application under Order I Rule 10 CPC was filed in the pending reference proceedings under Section 18 of the LA Act whereas CEPCO had filed its Application to implead itself as a party in the reference under Sections 30 and 31 of the LA Act, made by the Collector to the Reference Court.

⁶2007 SCC OnLine MP 289



- (v) Relying on the judgment of a Coordinate Bench of this Court in the case of *Peerless General Finance and Investment Company Ltd. v. Union of India*⁷, it is contended that the settled position in law is that an Application under Order I Rule 10 CPC is maintainable in reference proceedings under Sections 30 and 31 of the LA Act.
- (vi) CEPCO is a necessary and proper party in the reference proceedings pending before the learned ADJ as it is the purchaser of the said Property and the acquired land forms a part thereof. CEPCO is a 'person interested' as defined under Section 3(b) of the LA Act, since the registered sale deed was executed by CEPCO with the erstwhile owners of the said Property. Nirmal Towers does not have any registered title documents in its favour in respect of the acquired land for which the compensation is sought for, and not impleading CEPCO would result in grave injustice as CEPCO would not be able to make a rightful claim in the compensation awarded by the Collector.
- (vii) In deciding an Application under Order I Rule 10 CPC, the Court is not required to examine the merits of the claim but only to see whether the party seeking impleadment is a necessary and a proper party for adjudication of the disputes. CEPCO is a necessary party and the Impugned Order has reserved the rights of Nirmal Towers to raise all contentions before the Reference Court. It is therefore contended that the Impugned Order does not suffer from any infirmity.

⁷2017 SCC OnLine Del 10764



5. This Court shall first deal with the preliminary objection taken by CEPCO on maintainability of the present Appeal. Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore, which is applicable to High Court of Delhi [hereinafter, referred to as the Letters Patent] bars an intra-Court Appeal if the impugned judgment is passed in exercise of :

- (i) Revisional Jurisdiction;
- (ii) Power of superintendence; and
- (iii) Criminal Jurisprudence.

5.1 However, the Petition filed by CEPCO before the learned Single Judge, invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution and also under Article 227 of the Constitution of India. Where a composite petition under Articles 226 and 227 is filed, the determinative factor of exercise of jurisdiction will be the real nature of the jurisdiction exercised by the learned Single Judge in the Order against which an Appeal is filed. If the nature of the order is such that jurisdiction under Article 226 was exercised, then the Appeal is maintainable but not if the power of superintendence has been exercised under Article 227 of the Constitution of India.

5.2 The Supreme Court in the case of *Surya Dev Rai v. Ram Chander Rai*⁸, has pithily explained the difference in exercise of power of judicial review conferred by Article 226 and the exercise of power of superintendence conferred by Article 227 of the Constitution as follows:

⁸(2003) 6 SCC 675



*"38.(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. **While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh,** the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."*

[Emphasis is Ours]

5.3 Thus, the settled position of law is if jurisdiction under Article 226 is exercised and proceedings are simply annulled or quashed then it is an exercise of power under Article 226, but if in addition to quashing or setting aside the proceedings, directions are given as the facts of the case may warrant and which may be by way of guiding afresh the Court below, then such is an exercise of power of superintendence under Article 227.

6. In the present case, learned Single Judge has set aside the order dated 02.06.2016, and allowed the application filed by CEPCO. The learned Single Judge has further directed, that the submissions regarding the title of CEPCO would have to be adjudicated by the concerned Court. No other directions have been issued to the Subordinate Court.

6.1 Thus, the Impugned Order is in exercise of jurisdiction under Article 226 and an Appeal invoking Letters Patent of this Court is maintainable.

7. It is the contention of learned Counsel for Nirmal Towers that the proceedings in issue, are not proceedings under Sections 30 and 31 of the LA Act but under Section 18 of the LA Act and that where a reference is



pending under Section 18 of the LA Act, the law settled by the Supreme Court is that a party has no right to file an impleadment Application.

7.1 Nirmal Towers, while relying on the judgment in the *Shyamali Das* case and *Ajjam Linganna* case has contended that CEPCO is not an 'person interested' under Section 3(b) of the LA Act and the Reference Court does not have the power to entertain an application under Order I Rule 10 CPC.

8. The issue that, therefore, arises is whether these proceedings were under Section 18 of the LA Act or under Sections 30 and 31 of the LA Act.

9. The undisputed facts in the present Appeal are that a declaration under Section 6 of the LA Act was made on 17.04.2003 for acquisition of the acquired land. Objections to the declaration were filed by Nirmal Towers on 01.07.2003. Thereafter, on 30.06.2004, an Award numbered as 01/2004-05 was pronounced.

9.1 Since there was a dispute regarding an apportionment of the compensation, a reference was made by the Collector under Sections 30 and 31 of the LA Act to the Court of learned ADJ. On 04.10.2004, Notice was issued by the learned ADJ in this matter. Order dated 04.10.2004 reads as follows:

"LAC-
U.O.I
v.

Nirmal Towers etc.

Fresh reference U/s 30-31 of the LAC Act along with a cheque of Rs. 6,37,94,941/- received.

It be checked and registered.

Cheque be deposited in the treasury.

Issue court notices to the parties for 17.2.05.

Sd/-
ADJ/Delhi"

[Emphasis is Ours]



9.2 On 03.06.2005, CEPCO made an application in the proceedings pending before the Collector stating that it was entitled to compensation in respect of the acquired land. This application was rejected by the Collector on 21.09.2006 as it was filed after a lapse of one year and eleven months from the date of announcement of the Award, without any justifiable ground for delay and for being beyond the jurisdiction of the Collector.

9.3 CEPCO then filed an application on 24.01.2007 under Order I Rule 10 CPC for impleadment in the reference proceedings which were pending before the learned ADJ – which were the proceedings under Sections 30 and 31 of the LA Act referred to in paragraph 9.1 above.

9.4 By its Order dated 02.06.2016, this Application of CEPCO was rejected by the learned ADJ, holding that since CEPCO had not made any Application before the Collector for making a reference under Section 18 or 30 of the LA Act, it cannot be directly impleaded before the Reference Court and CEPCO's remedy lies in filing an Appeal against the dismissal order passed by the Collector, i.e., Order of 21.09.2006.

10. Thus, the Order dated 02.06.2016 directed that the Reference Court gets jurisdiction only if the matter is referred to it under Sections 18 or 30 of the LA Act by the Collector, and that the Reference Court has only the authority to decide the objections referred to it. Further, that since CEPCO has not made any application before the Collector, for such reference, CEPCO could not get itself impleaded directly before the Reference Court.

10.1 Nirmal Towers has placed reliance on the judgments of the Supreme Court in the *Shyamali Das* case and *Ajjam Linganna* case to make a similar submission.



11. The reliance placed by Nirmal Towers on the judgments of the Supreme Court in the *Shyamali Das* case and *Ajjam Linganna* case, however, is misplaced. In the *Ajjam Linganna*, Ajjam Linganna filed an application before the Land Acquisition Officer seeking a reference under Section 18 of the LA Act. By that date, a reference under Sections 30 and 31 of the LA Act was already pending before Reference Court. Ajjam Linganna then filed another application under Section 18 and for amendment of his existing reference under Sections 30 and 31 of the LA Act, which was allowed. Subsequently, other applicants also filed for impleadment and proceeded to seek enhancement of compensation. The High Court had held that the Reference Court is not entitled to amend a reference under Sections 30 and 31 of the LA Act into a reference and also under Section 18 of the LA Act. It was in that context that the Supreme Court directed that it is not open to the Reference Court to implead the other parties in the Reference Court without them having approached Land Acquisition Officer seeking a reference earlier. Other direction were passed qua Ajjam Linganna were specific to the facts of his case. The case thus turns on its own peculiar facts.

11.1 Similarly, in the *Shyamali Das* case, a finding of fact had been arrived at in an earlier Application under Order I Rule 10 for impleadment filed by the Applicant that the Applicant was not a person interested under Section 3(b) of the LA Act and the impleadment Application was dismissed. This finding was not challenged by the Applicant, thus, attained finality. Subsequently, an order was obtained by the Applicant in a Writ Petition filed by it, that he may apply before the Collector to determine the entitlement to the compensation awarded. No such Application was made either. An Application was then filed for setting aside the award passed by



the Collector. Thereafter, another Application for impleadment was made by the Applicant. It is in these circumstances, that it was held by the Supreme Court that, after being given an opportunity to proceed under Sections 30 and 31 of the LA Act and not having availed of that opportunity, the Applicant was not entitled to be impleaded as a party. It was held that in view of the earlier impleadment Application and the findings thereon, a second Application was not maintainable. The facts, thus, are entirely distinguishable from those of the present case.

12. A Coordinate Bench of this Court in the *Peerless* case has analysed the issue, in the context of the *Shyamali Das* case. The facts in the *Peerless* case were that an impleadment application was filed in proceedings under Sections 30/31 of the LA Act. The Applicant claimed rights in the acquired land as a mortgagee. Relying on the *Shyamali Das* case, the Reference Court held that application for impleadment is not maintainable. It was contended that in the *Shyamali Das* case, the applicant sought to be impleaded in ongoing reference proceedings after forgoing her right to seek relief under Sections 30/31 of the LA Act.

12.1 Clarifying this difference, the Coordinate Bench held :

"9. The decision in *Shyamali Das (supra)* was in the context of an award made by the Collector on 26.11.1998. The land owner had sought a reference under Section 18 of the Act soon thereafter. There were other references too. The third party claimant first approached the Calcutta High Court in a public interest litigation challenging the land acquisition and thereafter filed a suit claiming title over the property. During the pendency of those proceedings, the third party/applicant preferred two applications under Section 11/11A of the Act and 5/5A objecting to the acquisition of property and then sought for impleadment, under Order 1 Rule 10 of the Code of Civil Procedure before the Reference Court. It was in these circumstances that the Calcutta High Court observed that having lost the opportunity to claim relief under Section 30/31, the applicant could not be allowed to



participate in a reference proceeding which was confined to examining only the question of correctness of the compensation determined.

10. This Court is of the opinion that Shyamali Das (supra) is an authority that a third party, cannot seek impleadment in Section 18 proceedings. **However, the very object and rationale of Section 30/31 is to facilitate a forum within the four corners of the Land Acquisition Act, 1894, to claimants who with pre existing right, title or interest in respect of the lands or the right to receive compensation in some such capacity.** In these circumstances, having regard to these objectives, it is apparent that the impugned order is based upon a fundamental misreading of the provision. It is, therefore, liable to be set aside. The order dated 29.02.2016 is accordingly set aside. **The petitioner is directed to be impleaded under Section 30/31 read with Order 1 Rule 10 CPC in the proceedings pending before the Additional District & Sessions Judge and; the petitioner shall be further permitted to participate in the proceedings and claim its rights to amounts in accordance with law."**

[Emphasis is Ours]

13. A Full Bench [Five Judges] of the Andhra Pradesh High Court speaking through Chief Justice S.B. Sinha [as he then was], in a matter titled ***Repaka Bhyravamurthy v. Muppidi Venkataraju***⁹, while discussing the law on Sections 18 and 30 and 31 of the LA Act, held that both the provisions are distinct from each other as the Collector under Section 30 and 31 of the LA Act enjoys a broader discretion compared the limited provision of Section 18 of the LA Act. It was also held that, a party may not be entitled to be impleaded only for the purpose of enhancement of compensation, but if the question is with respect to the issue of his entitlement or apportionment of the compensation, an application for impleadment may be considered by the Courts. The Court also discussed the ***Ajjam Linganna*** case. The relevant extract is below :

"29. Section 30 confers a wide power upon the Collector to refer a dispute as regards the apportionment of the amount of compensation or

⁹ 2001 SCC OnLine AP 767



where a dispute arises as to persons to whom the same or any part thereof is payable. The Collector, therefore, has two options viz., (1) to enquire into the rights of the persons interested claiming the compensation in terms of section 11 (which incidentally used the word 'shall') or (2) refer the same to the decision of the Court.

....

31. The power of reference under section 30 is wider than the power of reference under section 18. Can it in this situation be said that a person who did not appear before the Land Acquisition Officer has no locus standi to get himself impleaded as a party? The answer to the same must be rendered having regard to the facts and circumstances of each case. A person may not appear either having not been issued any notice or otherwise before the Collector and still his interest may be protected by the Collector and an award can be passed in his favour.

However, an enquiry made by the Collector under section 11 of the Act cannot be held to have such a repercussion with those who had not been found to be interested in the claims as they would not have say at all. **However, a subsequent discovery or question of interest as regard the entitlement to receive the compensation or a part of it by reason of a subsequent event, in our opinion, may give rise to a situation where an application under Order 1 Rule 10 CPC may be maintainable.** The devolution of such interest may not be confined to the situation contained in Section 146 of the Code of Civil Procedure, more so, when a question of title is involved.

...

37. In a reference under section 30, not only the question of title, but also the status of the parties may be involved. Order 1, Rule 10 confers a wide power upon the Court.

46.....In Ajjam Linganna (supra), the parties applied directly to the reference Court for impleadment and sought for enhancement of the compensation under Section 18 of the Act. In that situation, it was held that they should have approached for reference in the first instance.

The Apex Court observed that appellant No. 1 made such application. In that case before the Apex Court, the parties had not appeared before the Land Acquisition Collector. Thus, the Apex Court has also directed impleadment of one of the parties who had only made prayer for reference although she had not appeared before the Land Acquisition Collector.....”

[Emphasis is Ours]

13.1 Against the order and judgment in the **Repaka** case, a Special Leave Petition was preferred. By its order dated 14.12.2001, the Special Leave



Petition was dismissed by the Supreme Court directing as follows :

“Allowing application under Order 1 Rule 10 CPC does not tantamount to adjudicating the rights of the impleaded person. We are not inclined accordingly to interfere with the impugned order. Taken on Board. The SLP is dismissed.”

[Emphasis is Ours]

14. The Impugned Order premises itself on the judgment in the **Peerless** case to hold that an impleadment Application can be filed in proceedings pending under Sections 30 and 31 of the LA Act. The learned Single Judge has in the Impugned Order briefly discussed the judgments of the Supreme Court in the **Shyamali Das** case and **Ajjam Linganna** case and, thereafter, relying on the **Peerless** case held that since the application for impleadment has been filed in proceedings under Sections 30 and 31 of the LA Act, the application is maintainable.

14.1 We find no infirmity in these findings of the learned Single Judge in the Impugned Order.

15. As seen above, the application for impleadment made by CEPCO, was made in proceedings under the provisions of Sections 30 and 31 of the LA Act. We agree with the view taken in the **Peerless** case and the **Repaka** case. Accordingly, it is directed that the parties have a right to file an application under Order I Rule 10 CPC where the proceedings are pending under Sections 30 and 31 of the LA Act.

16. During the course of arguments, various contentions have been raised by both the parties on the merits of the dispute between the parties including with regard to title of the acquired land. Nirmal Towers relies on the Judgment in the **Jai Narain** case to assert that the land was purchased by CEPCO and named Nirmal Towers as the beneficial owner and, thus, the



CEPCO has no right or title in the land. The issue of ownership of the acquired land and the other contentions can be presented by the parties before an appropriate authority and cannot be adjudicated by this Court.

16.1 Both parties are free to agitate their respective claims before the concerned Court and all rights and contentions of both the parties are left open in this regard.

17. The Appeal is accordingly dismissed. There shall be no order as to costs.

CM APPL. 16533/2022 [*Application seeking permission to file process fee*]

18. This is an Application filed on behalf of the Appellant seeking permission to issue fresh Notice to be served on Respondent Nos.3 to 22.

19. This Court had by its order dated 04.04.2022 directed fresh Notice to be issued to Respondent Nos.3 to 22 via all modes. This Application has thus become infructuous and is accordingly closed.

CM APPL. 43340/2022 [*Application seeking condonation of delay*] and **CM APPL. 43339/2022** [*Application seeking substitution of legal heirs of deceased Respondent No. 13*]

20. Since we have disposed of the Appeal, these Applications have become infructuous and are accordingly closed.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

NOVEMBER 06, 2023/r.