



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

Date of decision: 24th APRIL, 2024

IN THE MATTER OF:

+ **W.P.(C) 14864/2023 & CM APPL. 59185/2023**

SMT. JEETESHWARI JU DEVI

..... Petitioner

Through: Mr. C. Mohan Rao, Sr. Advocate with
Mr. Sharat Kapoor, Mr. Shubh
Kapoor and Ms. Bhavyah, Advocates.

versus

UNION OF INDIA MINISTRY OF HOME AFFAIRS & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh, Mr. Akash Mishra, Mr.
Debacharan De and Mr. Sachin
Dubey, Advocates for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court with following prayers:

“A. Issue an appropriate Writ, Order or Direction including a Writ in the nature of a Mandamus directing Respondent Nos. 1 to 6 to implement and give complete effect to the Agreement/ Gift Deed dated 24.04.1949 including the mutation of the Defense Lands in favor of Respondent No. 2 in the Civil Land Revenue Records;

B. Issue an appropriate Writ, Order or Direction including a Writ in the nature of a Mandamus directing Respondent Nos. 1 to 6 to conduct an enquiry or investigation into the Defense Lands covered under the Agreement/ Gift Deed dated 24.04.1949, reclaim the Defense Lands that have been



encroached/usurped/misappropriated and restore the same to Respondent No. 2 as per the Agreement / Gift Deed dated 24.04.1949;

C. Issue an appropriate Writ, Order or Direction including a Writ in the nature of a Mandamus directing Respondent Nos. 1 and 2 to conduct an enquiry or investigation into the serious lapses, irregularities, and misuse of the Defense Lands covered under the Agreement/ Gift Deed dated 24.04.1949 and take punitive action against the erring Respondents, their officers and individuals who are found committing illegalities as regards the use and occupation of the subject Defense Lands.”

2. The facts of the case reveal that the land in question belonged to the 13th Mahajara of Panna Late Lt. Col. Mahendra Maharaja Yadvendra Singh Ju Dev. After India gained independence, an Instrument of Accession and Standstill Agreement was entered into by the 13th Mahajara of Panna with the Dominion of India on 27.11.1947. On 27.08.1948, a Covenant was entered into by 35 Ruler States, formerly Bundelkhand and Bagelkhand States, to form United State of Vindhya Pradesh. On 24.04.1949, a Gift Deed was executed by the Maharaja of Panna whereby lands forming part of 1911 villages in Vindhya Pradesh were donated in favour of Military of Panna, Ministry of Defence, India. On 26.12.1949, A Vindhya Pradesh Merger Agreement was entered into whereby the Covenant dated 27.08.1948 was abrogated and the exclusive jurisdiction and authority of the complete Union State was ceded to the Dominion Government as the administration of Union State of Vindhya Pradesh was becoming difficult. The said Agreement came into effect from 01.01.1950.



3. It is stated that the land which was given in gift by the 13th Mahajara of Panna is being mismanaged and is not being put to use for which the land was gifted. Various Audit Reports have been filed by the Petitioner to show that the land is being mismanaged and the purpose of the Gift Deed is not being implemented. It is stated that despite the fact that this issue has been raised before Respondent Nos.1 and 2, no action has been taken by Respondent Nos.1 and 2. It is stated that there are several encroachments on the land which are not being removed and portions of land are being sold and also third party rights are being created and complaining inaction on the part of the Respondents, the Petitioner has approached this Court with the aforesaid prayers.

4. The Gift Deed dated 24.04.1949 has not been executed in Delhi. The land in question is in Madhya Pradesh. Material on record indicates that the concerned office is Principal Director, Defence Estate, Central Command, 17, Cariappa Road, Lucknow Cantt – 226002 for overseeing the management of the land in question.

5. This Court is, therefore, of the opinion that no cause of action has arisen within the territorial jurisdiction of Delhi.

6. The learned Senior Counsel appearing for the Petitioner contends that the land in question has been donated to Union of India and, therefore, this Court has jurisdiction to entertain the instant writ petition under Article 226(2) of the Constitution of India. The said contention of the learned Senior Counsel for the Petitioner cannot be accepted. The Apex Court in “State of Goa vs. Summit Online Trade Solutions (P) Ltd.”, **2023 SCC OnLine SC 254**, while dealing with the question of territorial jurisdiction to be exercised by the High Courts under Article 226 of the Constitution of India, has



observed as under:

“13. From the above, it is clear that according to the petitioning company the cause of action has arisen in Sikkim only, meaning thereby the whole of the cause of action and not part of it; additionally, it is stated that all the respondents are located within the territorial jurisdiction of the High Court which is factually incorrect.

14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a High Court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle. Bearing this in mind, we have looked into the petition memo of WP (C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.

16. The expression “cause of action” has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in Cooke v. Gill [Cooke v. Gill, (1873) LR 8 CP 107]



that “cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.

17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

18. Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim. Hence, merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorising



the petitioning company to move the High Court. We hold so in view of the decision of this Court in National Textile Corpn. Ltd. v. Haribox Swalram [National Textile Corpn. Ltd. v. Haribox Swalram, (2004) 9 SCC 786] . The immediate civil or evil consequence, if at all, arising from the impugned notification is that the petitioning company has to pay tax @ 14% to the Government of Goa. The liability arises for the specific nature of business carried on by the petitioning company within the territory of Goa. The pleadings do not reflect that any adverse consequence of the impugned notification has been felt within the jurisdiction of the High Court. At this stage, we are not concerned with the differential duty as envisaged in Schedule II (@ 6%) vis-à-vis Schedule IV (@ 14%) of the impugned notification. That is a matter having a bearing on the merits of the litigation.

19. The long and short of the matter is that the petitioning company has to bear the liability of paying tax @ 14% levied by the Government of Goa for selling lottery tickets in the State of Goa under Schedule IV of the impugned notification. It does not bear out from the petition memo how the impugned notification levying tax for carrying on business in the State of Goa subjects the petitioning company to a legal wrong within the territory of Sikkim for the writ petition to be entertained by the High Court.

20. In our opinion, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of a case having been made out as to how part of cause of action arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim.

21. Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a



slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in Kusum Ingots & Alloys Ltd. v. Union of India [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254] and Ambica Industries v. CCE [Ambica Industries v. CCE, (2007) 6 SCC 769] , even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit.”

(emphasis supplied)

7. A Co-ordinate Bench of this Court in “NBCC (India) Limited vs. Dakshin Haryana Bijli Vitran Nigam and Others”, **2023 SCC OnLine Del 6118** has observed as under:

14. The jurisdiction of the High Court to issue writs to any person or authority within its territorial jurisdiction thus flows from Article 226(1) of the Constitution. Additionally, Article 226(2)1 extends the jurisdiction of the High Court to Government, authorities or persons seated outside its jurisdiction if the cause of action, wholly or in part, arose within the jurisdiction of the High Court. It has been held by the Supreme Court that, akin to Section 20(c) of the Civil Procedure Code, 1908, “cause of action” for the purposes of Article 226(2) of the Constitution constitutes the bundle of facts which are required to be proved in order for the writ to be issued.

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17. Nonetheless, the matter requires further examination in the context of the doctrine of forum conveniens. This principle has been laid down in several decisions of the Supreme Court and this Court. It provides a key



exception to the exercise of jurisdiction, even when it does vest in the Court, and essentially mandates that a High Court will not exercise jurisdiction if the proceedings are most intimately connected with another High Court.

18. In Kusum Ingots & Alloys Ltd. v. Union of India, which was cited by learned counsel on both sides, the question framed by the Supreme Court was whether the seat of Parliament or the State legislature would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition. The Supreme Court held that even a small part of the cause of action arising with the jurisdiction would vest jurisdiction under Article 226(2) of the Constitution. For this purpose, the averments in the writ petition must be taken at face value, subject to the condition that they bear a nexus to the prayers sought. However, it was held that passing of a legislation at a particular place, by itself, does not confer jurisdiction. The Court then referred to the concept of forum conveniens in the following terms:

“Forum conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney, Madanlal Jalan v. Madanlal, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India.]”

19. The recent decision of the Supreme Court in State of Goa v. Summit Online Trade Solutions (P) Ltd. has



elaborated upon the concept of “cause of action” in the context of Article 226(2) of the Constitution. The Court held that the writ petitioner in that case had not shown that any part of the cause of action had arisen in the State of Sikkim, so as to avail of the writ jurisdiction of the High Court of Sikkim. Having so held, the Supreme Court further observed as follows:

*“21. Even otherwise, the High Court was not justified in dismissing the interim applications. **Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court.** As held by this Court in *Kusum Ingots & Alloys Ltd. v. Union of India* and *Ambica Industries v. CCE*, **even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit.**”*

*20. A Five-Judge Full Bench of this Court in *Sterling Agro Industries v. Union of India* has reiterated the principles laid down in *Kusum Ingots*. The following extracts from the conclusions recorded by the Full Bench provide useful guidance in dealing with the present case:*

*“33. In view of the aforesaid analysis, we are inclined to modify, the findings and conclusions of the Full Bench in *New India Assurance Company Limited (supra)* and proceed to state our conclusions in seriatim as follows:*

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*(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd.**



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(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

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(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra)”

21. Other than the judgments referred to above, in the written submissions filed by the petitioner, reference has been made to the judgment in Maharashtra Chess Assn. v. Union of India. In the said judgment, the Supreme Court has emphasised the broad nature of the principles which inform the exercise of the Court's writ jurisdiction. However, for the purposes of the present case, it is significant that even while so doing, the Court has acknowledged both the discretionary nature of the jurisdiction and the limitations of territoriality which the writ Court must be conscious of, including the concept of forum non-conveniens

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23. Mr. Tiwari, learned counsel for respondent No. 3 cited two decisions of this Court which predate Kusum Ingots, but lay down a similar principle. Like in the present case, the Division Bench in Sector Twenty-one Owners Welfare Association (STOWFA) v. Air Force Naval Housing Board was faced with a dispute with regard to a housing society outside Delhi. A welfare association of owners of flats in a society in Noida, Uttar



Pradesh invoked the writ jurisdiction of this Court in respect of execution of registration of sale deeds and sub-lease deeds. Although one of the respondents was located within the jurisdiction of this Court, the Division Bench declined jurisdiction for the following reasons:

*“13. The law as reflected by the above said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. **It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determinating factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining of proforma or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for the purpose of Article 226(1).***

*14. Reverting back to the case at hand, it is clear that the cause of action has wholly arisen in NOIDA within the State of U.P. **The principal and substantial grievance of the petitioner association is against the respondents No. 2 and 3, The writ to be issued by the Court shall run against the respondents No. 2 and 3 though incidentally, the respondent No. 1 may also be required to be bound by the writ. The reverse is not correct. The writ, if any, to be issued by the Court would not serve any purpose if issued against respondent No. 1 alone....”***

(emphasis supplied)

8. Another Co-ordinate Bench of this Court vide Order dated 08.02.2022 passed in **W.P.(C) 2162/2022** in the case of “Rupesh Kakkad vs. Union of



India and Ors” has observed as under:

“9. New India Assurance thus authoritatively reiterates the settled legal position that for the purposes of considering the issue of territorial jurisdiction, even if a part of the cause of action falls within the territorial limits of a court, the petitioner would be entitled to invoke its jurisdiction and recognise the right of “forum conveniens” as inhering in the litigant. Even a miniscule but relevant facet of the cause compelling the litigant to approach that particular court would be sufficient. However, in the facts of the present case, learned counsel, despite repeated queries was unable to establish that the respondents Nos. 1 to 3 had to discharge some obligation with respect to mutation or that any direction was required to be framed commanding them to proceed in the matter for the purposes of facilitating mutation by respondent No. 4. In fact and as a reading of the reliefs as sought in the writ petition would reveal, no specific direction against respondent nos. 1 to 3 is either framed or sought.

10. The principles which must govern were succinctly enunciated by the Supreme Court in Alchemist Ltd. Vs. State Bank of Sikkim, (2007) 11 SCC 335 in the following terms:-

“37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a “part of cause of action”,



nothing less than that.”

9. Ms. Nidhi Raman, learned CGSC, also raises an objection that the present writ petition is hit by Article 363 of the Constitution of India. Article 363 of the Constitution of India bars courts from entertaining disputes arising out of agreements and covenants except cases which are referred to the Hon’ble Supreme Court by the President. Article 363 of the Constitution of India reads as under:

“363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.—(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article—

(a) “Indian State” means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) “Ruler” includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the



Dominion of India as the Ruler of any Indian State.”

10. The Apex Court in “State of Karnataka vs. State of Tamil Nadu”, (2018) 4 SCC 1 while deciding the bar on jurisdiction of courts under Article 363 of the Constitution of India has observed as under:

107. Shah, J., while speaking for the majority, interpreting Article 363, ruled: (Madhav Rao Scindia case [Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85] , SCC pp. 161-62, paras 133 & 134)

“133. Jurisdiction of the courts in matters specified is excluded not because the Union of India is successor to the paramountcy of the British Crown, nor because the rights and obligations accepted and recognised by the Constitution may still be regarded as flowing from acts of State: it is only excluded in respect of specific matters by the express provision in Article 363 of the Constitution. Jurisdiction of the courts even in those matters is not barred “at the threshold” as contended by the Attorney General. The President cannot lay down the extent of this Court's jurisdiction. He is not made by the Constitution the arbiter of the extent of his authority, nor of the validity of his acts. Action of President is liable to be tested for its validity before the courts unless their jurisdiction is by express enactment or clear implication barred. To accede to the claim that the jurisdiction of the Court is barred in respect of whatever the executive asserts is valid, is plainly to subvert the Rule of Law. It is therefore within the province of the Court alone to determine what the dispute brought before it is and to determine whether the jurisdiction of the Court is, because it falls within one of the two limbs of Article 363, excluded qua that dispute. The first limb of Article 363 operates to defeat the jurisdiction of the courts only when a claim to relief founded on the covenants is disputed:



the second limb of Article 363 operates when there is a dispute with respect to rights or obligations accruing or arising out of a provision of the Constitution relating to a covenant.

134. In dealing with the dimensions of exclusion of the exercise of judicial power under Article 363, it is necessary to bear in mind certain broad considerations. The proper forum under our Constitution for determining a legal dispute is the Court which is by training and experience, assisted by properly qualified advocates, fitted to perform that task. A provision which purports to exclude the jurisdiction of the courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the courts is by clear enactment or necessary implication barred, be denied his right to seek recourse to the courts for determination of his rights. The Court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the lawmaker intending injustice and unreason. The Court will avoid imputing to the legislature an intention to enact a provision which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from words plain and unambiguous. The provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property must, unless the mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitutional and statutory provisions alike.”

And again: (SCC pp. 164-65, paras 141 & 142)



“141. ... Article 363 prescribes a limited exclusion of the jurisdiction of courts, but that exclusion does not operate upon the claim for a Privy Purse, relying upon Article 291. The question as to the jurisdiction of the Courts to entertain a claim for payment of Privy Purse did not fall to be determined in Usman Ali Khan case [Usman Ali Khan v. Sagarmal, AIR 1965 SC 1798] . The only question raised was whether the Privy Purse was not capable of attachment in execution of the decree of a civil court, because of the specific exemption of political pensions under Section 60(1)(g) of the Code of Civil Procedure. In Vir Rajendra Singh case [Vir Rajendra Singh v. Union of India, (1969) 3 SCC 150] the Court did not express any opinion that Article 366(22) was a provision relating to a covenant within the meaning of Article 363. In that case the petitioner who was not recognised as a Ruler by the President abandoned at the hearing of his petition his claim to the Privy Purse payable to the Ruler of Dholpur, and pressed his claim by succession under the Hindu Law to the private property of the former Ruler. The Court was not called upon to decide and did not decide that Article 366(22) was a provision relating to a covenant within the meaning of Article 363. It is difficult to regard a word or a clause occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not fall to be answered in that judgment.

142. In the view we have expressed, the argument raised by Mr Palkhivala that even if clause (22) of Article 366 is a provision relating to the covenants, the jurisdiction of this Court under Article 32 to grant relief against an invalid exercise of power withdrawing recognition of the Rulers is not barred, needs no consideration.”

108. Presently, we may refer to the analysis of Article 363 as has been made by the Constitution Bench in State



of T.N. v. State of Kerala [State of T.N. v. State of Kerala, (2014) 12 SCC 696] . In the said case, the learned Chief Justice, speaking for the Court, opined that a plain reading of Article 363 leaves no manner of doubt that if the dispute arises in respect of a document of that description and if such document had been executed before the commencement of the Constitution, the interference by courts is barred. The documents referred to in Article 363 are those which are political in nature. Any dispute regarding such documents is non-justiciable. The object behind Article 363 is to bind the Indian Rulers with treaties, agreements, covenants, engagements, “sanads” or other similar instruments entered into or executed before the commencement of the Constitution and to prevent the Indian Rulers from resiling from such agreements as the integrity of India was to be maintained at all costs and could not be affected by raising certain disputes. Thereafter, the larger Bench referred to the “White Paper” on Indian States prepared by the Government of India in 1948 which brings out the historical perspective which necessitated the adoption of the provisions in Article 363.

109. *The Court reproduced a passage from the “White Paper” which reads as under: (State of T.N. case [State of T.N. v. State of Kerala, (2014) 12 SCC 696] , SCC p. 742, para 72)*

“72. ... ‘Article 363 has therefore been embodied in the Constitution which excludes specifically the Agreements of Merger and the Covenants from the jurisdiction of courts except in cases which may be referred to the Supreme Court by the President’.”

110. *After so stating, the Court referred to Article 131 that deals with the original jurisdiction of this Court and proceeded to state: (State of T.N. case [State of*



T.N. v. State of Kerala, (2014) 12 SCC 696] , SCC p. 743, para 74)

“74. There is similarity of provision in Article 363 and proviso to Article 131. The original jurisdiction conferred on this Court by the main provision contained in Article 131 is excepted by virtue of the proviso in the matters of political settlements. By making provisions such as Article 363 and proviso to Article 131, the political settlements have been taken out of the purview of judicial pronouncements. Proviso appended to Article 131 renders a dispute arising out of any treaty, agreement, covenant, engagement, sanad or similar instrument which is political in nature executed before the commencement of the Constitution and which has or has been continued in operation, non-justiciable and jurisdiction of this Court is barred. The jurisdiction of this Court is not taken away in respect of the dispute arising out of an ordinary agreement. The instruments referred to and described in the proviso are only those which are political in nature. Non-political instruments are not covered by the proviso.”

III. Be it noted, the larger Bench has referred to the decision in Virendra Singh [Virendra Singh v. State of U.P., (1955) 1 SCR 415 : AIR 1954 SC 447] and opined thus: (State of T.N. case [State of T.N. v. State of Kerala, (2014) 12 SCC 696] , SCC p. 741, para 70.2)

“70.2. The exposition of above legal position by the Constitution Bench hardly admits of any doubt. Obviously, the accession of an Indian State to the Dominion of India and acceptance of it by the Dominion are acts of State and jurisdiction of the courts to go into its competency or settle any dispute arising out of them are clearly barred under Article 363 and the proviso to Article 131. As we have already held—and that is what has been held in the 2006 judgment as well—that the



1886 Lease Agreement is an ordinary agreement and that it is not political in nature, the embargo of Article 363 and the proviso to Article 131 have no application.”

And again: (SCC p. 743, para 76)

“76. We are in complete agreement with the view taken by this Court in Mullaperiyar Environmental Protection Forum [Mullaperiyar Environmental Protection Forum v. Union of India, (2006) 3 SCC 643] that the 1886 Lease Agreement would not come within the purview of Article 363 and jurisdiction of this Court is not barred. As a necessary corollary, the dispute arising out of the 1886 Lease Agreement is not barred under Article 131 proviso as well. Moreover, the principal challenge laid in the suit pertains to the constitutional validity of the 2006 (Amendment) Act for which Article 363 or for that matter under Article 131 proviso does not come into operation at all.”

112. On a perusal of the aforesaid, it seems to us that there is no discord or lack of concord with the view expressed in State of Seraikella [State of Seraikella v. Union of India, 1951 SCC 288 : 1951 SCR 474 : AIR 1951 SC 253] . We are persuaded to think so as the Constitution Bench in the earlier case was dealing with a different kind of instrument which was indubitably of political character entered prior to coming into force of the Constitution.

113. In Madhav Rao Scindia [Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85] , the sphere of adjudication was absolutely different. In the case at hand, the agreements in question relate to the sphere of water sharing, irrigation, etc. and have nothing to do, even remotely, with the concept of sovereignty and integrity of India and, therefore, it will be erroneous to hold that the bar under Article 363 of the Constitution would apply. It is so as both the Agreements between the States do not refer to any political element and cannot be



termed as political in character. The view expressed in State of Seraikella [State of Seraikella v. Union of India, 1951 SCC 288 : 1951 SCR 474 : AIR 1951 SC 253] , as already stated hereinbefore, related to an aspect of integrity or sovereignty of India and that is why, the bar operated. The bar under Article 363 was not allowed to stand in Madhav Rao Scindia [Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85] as it was dealing with a constitutional claim of the Rulers relating to Privy Purse and the same did not have any political characteristics. In any case, the position has been absolutely made clear by the Constitution Bench in State of T.N. [State of T.N. v. State of Kerala, (2014) 12 SCC 696] (popularly known as Mullaperiyar dam case). Therefore, it can be stated, without desiring to give rise to any controversy and without fear of any contradiction, that the bar under Article 363 is not applicable. The submission astutely advanced on behalf of the State of Karnataka that the two agreements should not be looked into at all for the purpose of adjudication of the water dispute by the Tribunal because of Article 262 of the Constitution is unacceptable.”

This Court does not intend to go into the question as to whether Article 363 of the Constitution of India would be a bar on jurisdiction of courts or not since the issue raised in the writ petition deals with a Gift Deed executed by the Maharaja of Panna.

11. Another question which arises for consideration is that once the land in question stands gifted to the Union of India as to whether the Petitioner will have a locus to maintain the instant writ petition or not since on the execution of the Gift Deed, the title of the land in question vests in the Government of India, and as to whether the instant writ petition would be a public interest litigation as the Petitioner would not have any locus to



maintain the instant writ petition after the 13th Mahajara of Panna and his family members have lost the right, title and interest in the land in question.

12. In view of the above, this Court is not inclined to entertain the instant writ petition on the ground of territorial jurisdiction as no part of the cause of action has arisen within the jurisdiction of this Court. It is made clear that the instant writ petition is not being entertained on this ground alone.

13. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 24, 2024

S. Zakir