Kutchi Lal Rameshwar Ashram Trust Evam ... vs Collector,Haridwar on 22 September, 2017

Equivalent citations: AIR 2018 SUPREME COURT 614, 2017 (16) SCC 418, 2018 (3) ALJ 162, AIR 2018 SC (CIVIL) 1009, (2018) 1 UC 712, (2018) 1 UC 574, (2018) 1 RECCIVR 690, (2017) 2 WLC(SC)CVL 756, (2017) 125 ALL LR 898, (2017) 4 CIVILCOURTC 619, (2018) 138 REVDEC 477, (2017) 5 CAL HN 150, (2018) 1 HINDULR 1, (2018) 2 ANDHLD 139, (2017) 2 CLR 1170 (SC), (2018) 1 ALL RENTCAS 193, (2017) 4 CURCC 26, (2018) 1 ICC 522, (2017) 12 SCALE 23, (2017) 180 ALLINDCAS 83 (SC), (2018) 1 MAD LW 940

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Bench: Chief Justice, A.M. Khanwilkar, D.Y. Chandrachud

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REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3878 OF 2009

KUTCHI LAL RAMESHWAR ASHRAM
TRUST EVAM ANNA KSHETRA
TRUST THR. VELJI DEVSHI PATEL ....APPELLANT

Versus

COLLECTOR, HARIDWAR & ORS. .....RESPONDENTS

JUDGMENT

Dr D Y CHANDRACHUD, J 1 This appeal has arisen from a judgment rendered on 15 May 2007 by a Division Bench of the High Court of Uttarakhand at Nainital. Finding no substance in the writ

petition filed under Article 226 of the Constitution, the High Court affirmed the order passed by the Collector, Haridwar on 12 May 2003 holding that the property in dispute stands vested in the government under Section 29 of the Hindu Succession Act, 1956. This finding has been premised on the basis that there exists no heir to succeed to the property following the death of Mohan Lal. 2 The petitioner claims to be a public trust registered under the Bombay Public Trusts Act, 1950. The Trust claims to have a vast amount of property at Haridwar which is being used for charitable purposes including (i) arranging for the stay of pilgrims and saints who visit Haridwar and providing food and other facilities to them; and (ii) performing and organizing religious functions. The petitioner conducts a Sanskrit Vidyalaya as well as a dispensary.

3 Swamy Udhav Das Ji Maharaj was visually challenged. On 28 November 1955, he is stated to have purchased land admeasuring two bighas and fifty khewat at Haridwar in the name of his chela, Mohan Lal. According to the petitioner, the Swamy founded the Kutchi Lal Rameshwar Ashram Trust. He is stated to have executed a will on 22 October 1956 nominating some individuals who would manage and administer his properties, including the property in question, after his lifetime. According to the petitioner, this was a second registered will executed by the Swamy since some of those who were nominated in an earlier registered will were not inclined to accept the responsibility.

4 On 13 January 1957, the Swamy died. The Trust is stated to have been registered on 11 November 1957. Among the objects of the Trust, are the following:

> "4. The main purpose for which the Ashram was established at Haridwar under the inspiration of Mahrajshri Odhavdasji has been to provide a centre and shelter for those Kutchi people in particular and others in general who go to the Holy Shrines at Haridwar, for the purposes of devotion and their peace of mind and the same shall continue to be the main objective and purposes of the Trust along with any other objective which might further the main object such as religious education prayers etc.

5. It was the cherished object of the revered Maharajshri Odhavdasji that the Ashram should provide both shelter and food to the deserving and this is being done within the limitation of the resources at the disposal of the Trust. Many people have expressed their desire to donate moneys for the purposes of running an "Anna Kshetra" as desired by their late Guru Maharaj." According to the petitioner, all the movable and immovable properties were vested in the Trust. On 23 March 1958, an unregistered declaration is stated to have been executed by Mohan Lal stating that though the property was purchased in his name by the late Swamy, neither he nor his legal heirs would have any rights in the property. The whereabouts of Mohan Lal are not known since 1958. 5 On 10 July 2001, a suit1 was instituted by the petitioner seeking an injunction against the third respondent (an individual by the name of Swamy Mahanand Awdhut Tatambri) described in these proceedings as :

> "Chela Swamy Brahmchari Ji Awdhut, Resident of Tatambri Ashram, Sapt Sarovar Road, Bhoopat Wala, Haridwar, Uttarakhand." The suit for injunction appears to have been instituted on the ground that the third respondent was attempting to make a construction on some part of the property in dispute. A few months after the institution of the suit, the third respondent filed a complaint on 15 October 2001

before the Collector alleging that the property belonged to Mohan Lal. According to him, a Patta was executed on 28 November 1955 in favour of Mohan Lal by Govind Ram and Shiv Ram. According to the complaint, Mohan Lal had died and there being no legal heir, the property stands vested in the state government under Section 29 of the Hindu Succession Act 1958.

1 Suit 225 of 2011

6 The Collector issued a notice to the petitioner following receipt of the complaint. A reply was filed before the Collector on 13 November 2001. The reply traces the acquisition of the property by the late Swamy in the name of his disciple Mohan Lal on 28 November 1955 and adverted to the will executed and registered by the Swamy on 22 November 1956. The reply relied upon the declaration by Mohan Lal on 23 March 1958 stating that he had no right or interest in the property. The reply adverted to the construction carried upon the property by the Kutchi Lal Rameshwar Ashram Trust after plans were duly sanctioned by Haridwar Development Authority. The reply also referred to the fact that the property has been assessed to municipal taxes in the name of the Trust. The Trust claims to have built upon the property and to be in occupation without interruption for forty-five years. Moreover, it was stated that a suit before the Civil Judge, Haridwar was instituted by the Trust since Swamy Mahanand Awdhut Tatambri who had recently purchased the adjoining property had carried out certain unauthorized constructions that affected the rights of the Trust. The petitioner claimed that the complaint against it was instituted before the Collector as a reprisal for the dispute with the adjoining owner which had led to the institution of a suit before the Civil Court.
7 On 12 May 2003, the Collector at Haridwar adjudicated upon the notice to show cause issued by him. The Collector held that a patta of the property was secured by Mohan Lal on 15 July 1955 and on 28 November 1955. According to the Collector, the Trust had not submitted any documentary evidence from which it could be deduced that the property had been purchased in the name of Mohan Lal from the funds of Swamy Udhav Das. According to the Collector, the alleged admission deed of 23 March 1958 by Mohan Lal could not be relied upon, since he was shown to be a resident of Reha Kuch (presently Chandrakela) whereas the person in whose favour the patta had been executed was a resident of village Ishwar Nagar. According to the Collector, the Swamy died before 11 November 1957. The Trust, in the view of the Collector, had failed to submit evidence in respect of the heirs of Mohan Lal. The Collector proceeded to draw an inference of the death of Mohan Lal since he was not heard of for seven years. On this basis, the Collector arrived at the conclusion that the property vested in the State Government by the operation of law. The City Magistrate at Haridwar was directed to take immediate action for taking over the possession of the property.

8 Aggrieved by the order of the Collector, Haridwar, which held that the property had vested in the state government by the operation of Section 29 of the Hindu Succession Act, 1956, and directing the City Magistrate to take over possession, the petitioner challenged the decision in a writ petition under Article 226 of the Constitution before the High Court of Uttarakhand. The Trust claimed to be in the management of the property for over forty-five years and submitted that the only manner in which action adverse to it could have been taken was on the basis of a title action pursued through the Administrator General or through a Civil Court. The Collector, in the submission of the Trust, could not assume the power to decide a question of title in the manner in which he had purported to

do. 9 Certain developments took place after the Trust instituted writ proceedings before the High Court of Uttarakhand in May 2003. The third respondent had filed an appeal against an order of interim injunction passed in favour of the Trust in the suit instituted by it in the Civil Court. The appeal was dismissed by the Additional District Judge, Haridwar on 24 December 2003. On 9 May 2005, a Division Bench of the High Court admitted the writ petition of the trust challenging the order of the Collector. The High Court stayed the order on the ground, prima facie, that the Collector had no jurisdiction to do so. On 10 April 2007, a writ petition filed by the trust was dismissed (erroneously according to the petitioner on the basis of the facts of another case). The petitioner filed a review petition. The review was allowed by a Division Bench of the High Court on 15 May 2007 and the earlier order was recalled. Eventually, it was by its Judgment and Order dated 15 May 2007 that the Division Bench upheld the decision of the Collector.

10 The High Court held that the deed of acceptance alleged to have been executed by Mohan Lal on 23 March 1958 is not a registered document. Moreover, it has been stated that the executor of the deed of acceptance appears to be a person different from the person by the name of Mohan Lal who was the owner of the disputed land. According to the High Court, there was nothing to indicate that Mohan Lal had died prior to the preparation of the Deed of Trust on 11 November 1957. The High Court further held that the land was purchased by Mohan Lal in whose favour the original pattas were executed but there was no evidence to indicate that the funds were provided by the late Swamy. The findings of the High Court are in the following terms:

> "10 Undisputedly the land in question was purchased by Mohan Lal through pattas dated 28 November 1955 and 15 July 1955 whereas the appellant's claim is that the land was purchased by Mahant Udhav Das in the name of Mohan Lal, but no evidence has been adduced on behalf of the appellant showing that the land was purchased from the money of Mahant Udhav Das Ji. The appellant has not been able to establish that Mohan Lal on whose name the land was purchased and the Mohan Lal who had executed the acceptance deed is the same and one person. The appellant trust has not claimed itself the legal heir of Mohan Lal, the owner of the disputed property, but it has claimed the ownership on the basis of the will dated 22 October 1956 which was not executed by Mohan Lal. The owner of the land, Mohan Lal has no legal heir, therefore, the disputed land was liable to be devolved in the State Government in view of the provision of Section 29 of the Hindu Succession Act. We do not find any infirmity in the order passed by the Collector in this matter."

11 Leave has been granted in these proceedings on 12 May 2009, when an order of status quo was issued.

12 On behalf of the appellants, it has been submitted by Mr Aryama Sundaram, learned Senior Counsel that :

> (i) The Collector has acted without jurisdiction, in assuming the powers of the civil court and adjudicating on the vesting of the property in the state by escheat under Section 29 of the Hindu Succession Act, 1956;

(ii) In view of the clear dispute, involving the setting up of rival titles – the government claiming under Section 29 and the Trust setting up a contrary title, it was not open to the Collector to act as a judge in his own cause in his capacity as a representative of the state government;

(iii) Where a dispute of title or in regard to the absence of legal heirs within the meaning of Section 29 arises, it is only a civil court which can exercise jurisdiction; and

(iv) Assuming that the property belonged to Mohan Lal, the Collector ought not to have proceeded in the matter without due notice to him and hence the inference that Mohan Lal was dead, as not having been heard of for seven years, is fallacious.

13 On the other hand, it has been submitted on behalf of the state government that the order passed by the Collector constitutes a valid exercise of jurisdiction. It was urged that the Collector had justifiably come to the conclusion that Mohan Lal had not been succeeded by any heir, upon which the property must be regarded as having vested in the state under Section 29 of the Hindu Succession Act, 1956. It may be noted that in the counter affidavit which has been filed in these proceedings, the first and second respondents have adverted to the source of power of the Collector being traceable to Section 29 of the Hindu Succession Act, 1956, besides which reliance has been placed on Section 167 (2) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in its application to the State of Uttarakhand. 14 Shri M N Rao, learned Senior Counsel appearing on behalf of the third respondent has adopted the submission which was urged before the Collector by his client as complainant. Learned Senior Counsel however urged that it was for the Collector and the state to sustain the order which has been passed. 15 Before we deal with the merits of the rival contentions, an issue needs to be addressed at the threshold. Initially, on 16 July 2007, notice was issued "confined to the question as to whether the Collector has power to pass an order under Section 29 of Hindu Succession Act, 1956 in view of the provisions of the Administrators-General Act, 1963". Leave was granted on 12 May 2009. Relying upon the initial order, which confined the notice to a specific issue, learned Counsel for the state submitted that the grant of leave subsequently should not be regarded as having expanded the scope of the controversy to all the issues raised in the appeal. Hence, the submission is that the only issue which ought to be addressed is that which was adverted to when notice was issued.

16 While addressing the preliminary issue, it would, in our view, be inappropriate and, perhaps even unsafe, to lay down a broad generalisation. The constitutional jurisdiction which is conferred upon this Court has its basis in the advancement of justice. The power of the court to render justice should not be constricted by a narrow approach to its mandate. In the context of a criminal case, a Bench of two Judges of this Court in Yomeshbhai Pranshankar Bhatt v State of Gujarat2 considered a situation where a conviction under Section 302 of the Penal Code had been affirmed by the High Court. Initially, this Court issued notice confined only to the question as to whether the accused was guilty of the commission of an offence under any of the parts of Section 304 and not under Section 302. The issue was whether the ambit of the appeal was confined to what was stated in the notice 2 (2011) 6 SCC 312 initially issued. In this context, the Court adverted to the Supreme Court Rules,

1966 which have been framed under Article 145 of the Constitution. Order XLVII Rule 6 of the rules of procedure of this Court provides as follows:

> "6. Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court." Article 142 of the Constitution enables this Court, in the exercise of its jurisdiction, to pass such decrees and make such orders as is necessary for doing complete justice in any case or matter pending before it. After adverting to Article 142, this Court held as follows :
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> "18. It is, therefore, clear that the Court while hearing the matter finally and considering the justice of the case may pass such orders which the justice of the case demands and in doing so, no fetter is imposed on the Court's jurisdiction except of course any express provision of the law to the contrary, and normally this Court cannot ignore the same while exercising its power under Article 142. An order which was passed by the Court at the time of admitting a petition does not have the status of an express provision of law. Any observation which is made by the Court at the time of entertaining a petition by way of issuing notice are tentative observations. Those observations or orders cannot limit this Court's jurisdiction under Article 142." Hence, the Court observed that at the time of final hearing, it would not be precluded from considering the controversy "in its entire perspective" and while doing so, it is not "inhibited by any observation, any order made at the time of issuing the notice".
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> A similar view was taken in an earlier decision in State of Uttaranchal v Alok Sharma3. In Indian Bank v Godhara Nagrik Cooperative Credit Society

3 (2009) 7 SCC 647 Limited4, a Bench of two Judges of this Court held that though a limited notice was issued initially, leave having been granted thereafter, "all the contentions of the parties are now open".

17 We respectfully reiterate and adopt this view which is based on a sagacious approach to the constitutional powers that are conferred upon the Court. Article 142 embodies the fundamental principle that the jurisdiction of the court is to render complete justice and as an incident of it, the court may pass such decrees or orders as it considers fit. When the court initially issues a limited notice but subsequently grants leave, the scope of the appeal does not raise a matter of jurisdiction but of judicial discretion. Since it constitutes a matter of discretion and not of jurisdiction, the guiding principle has to be the advancement of substantial justice. 18 Section 29 of the Hindu Succession Act, 1956 has been invoked by the Collector. Section 29 provides as follows:

> "29. Failure of heirs- if an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject." Section 29 embodies the principle of escheat. The doctrine of escheat postulates that where an

individual dies intestate and does not leave behind an heir who is qualified to succeed to the property, the property devolves on government. Though the property devolves on government in such an eventuality, yet the government 4 (2008) 12 SCC 541 takes it subject to all its obligations and liabilities. The state in other words does not take the property "as a rival or preferential heir of the deceased but as the lord paramount of the whole soil of the country", as held in State of Punjab v Balwant Singh5. This principle from Halsbury's Laws of England6 was adopted by this Court while explaining the ambit of Section 29. Section 29 comes into operation only on there being a failure of heirs. Failure means a total absence of any heir to the person dying intestate. When a question of escheat arises, the onus rests heavily on the person who asserts the absence of an heir qualified to succeed to the estate of the individual who has died intestate to establish the case. The law does not readily accept such a consequence. In State of Bihar v Radha Krishna Singh7, a Bench of three Judges of this Court formulated the principle in the following observations :

"272. It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs-respondents. Even if they succeed in showing that the plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties." (id at p. 216) Mulla's Hindu Law8 succinctly summarises the position thus :

"Where the Crown or Government claims by escheat, the onus 5 (1992) Suppl (3) SCC 108 6 4th Ed. Vol 17, para 1439 7 (1983) 3 SCC 118 8 Twenty – second edition, pp. 1260-1261 lies on it to show that the owner of the estate died without heirs.

An estate taken by escheat is subject to the trusts, charges and legal obligations (if any) previously affecting the estate, e.g., mortgages and other encumbrances. This section rules that in case of failure of all the heirs recognised under the Act, on the death of the owner intestate, his or her property devolves on the Government. The Government takes the property subject to all legal obligations and liabilities to which an heir would have been subject if the property had devolved upon the heir by succession. The word 'failure' used in the section is very clear and indicative of the fact that there must be a absence of heirs of the intestate." In Rambir Das v Kalyan Das9 a Bench of two learned Judges of this Court dealt with a case of Shebaitship. Citing the authority of Justice B K Mukherjea's celebrated Tagore Law Lectures with approval, this Court took note of the position of law elucidated in the lectures :

> "As shebaitship is property, it devolves like any other property according to the ordinary Hindu law of inheritance. If it remains in the founder, it follows the line of founder's heirs; if it is disposed of absolutely in favour of a grantee, it devolves upon the heirs of the latter in the ordinary way and if for any reason the line appointed by the donor fails altogether, shebaitship reverts to the family of the founder." On the question of escheat, Justice B K Mukherjea observes thus :
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> "As there is always an ultimate reversion to the founder or his heirs, in case the line of Shebaits is extinct, strictly speaking no question of escheat arises so far as the devolution of shebaitship is concerned. But cases may be imagined where the founder also has left no heirs, and in such cases the founder's properties may escheat to the State together with the endowed property. In circumstances like these, the rights of the State would possibly be the same as those of the founder himself, and it would be for it to appoint a Shebait for the debutter property. It cannot be said that the State receiving a dedicated property by escheat can put an end to the trust and treat it as secular property." In other words, even in a situation where a founder or his line of heirs is extinct, and the properties escheat to the state, the state which receives a dedicated property is 9 (1997) 4 SCC 102 subject to the trust and cannot treat it in the manner of a secular property. In fact, we may note, Section 29 expressly stipulates that the state "shall take the property subject to all the obligations and liabilities to which an heir would have been subject."

19 In deciding this case, this Court must also bear in mind the settled principle that unless the founder of a math or religious institution has laid down the principle governing succession to the endowment, succession is regulated by the custom or usage of the institution. This principle was enunciated over six decades ago by this Court in Mahant Sital Das v Sant Ram10, rendered by Justice B K Mukherjea, speaking for a Bench of four judges :

> "10. In the appeal before us the contentions raised by the parties primarily centre round the point as to whether after the death of Kishore Das, the plaintiff or Defendant 3 acquired the rights of Mahant in regard to the Thakardwara in dispute. The law is well settled that succession to Mahantship of a Math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. As the Judicial Committee laid down [Vide Genda Puri v. Chhatar Puri, 13 IA 100, 105] in one of the many cases on this point; "in determining who is entitled to succeed as Mohunt, the only law to be observed is to be found in the custom and practice, which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it.... Mere infirmity of the title of the defendant, who is in possession, will not help the plaintiff".

20 The basic issue which has to be addressed in the light of the above principles is whether the Collector had jurisdiction to decide a question of title by assuming to himself the power of an

adjudicatory forum. The order of the Collector indicates that 10 AIR 1954 SC 606 the issue as to whether the property would vest in the state government as a result of a failure of heirs within the meaning of Section 29 was a seriously disputed issue turning upon an adjudication of conflicting claims. In the process of determining the issue purportedly under Section 29, the Collector has adjudicated upon various factual matters including (i) whether the property was purchased in 1955 by Mohan Lal with the funds provided by Swamy Udhav Das; (ii) the legality of the registered will stated to have been executed by the Swamy on 22 October 1956; (iii) the identity of the person who executed the deed of acceptance dated 23 March 1958 in comparison with the person in whose name the patta had been acquired in 1955;

(iv) whether Mohan Lal died prior to the execution of the deed of Trust on 11 November 1957; and (v) whether a presumption in regard to the death of Mohan Lal would arise upon his not being heard of allegedly for seven years. The Collector has proceeded to adjudicate on these, among other, factual issues. Section 29, it may be noted, embodies a principle but does not provide a procedural mechanism for adjudication upon disputed questions. The canvas of the controversy before the Court is an abundant indication of matters which were seriously in dispute. The contention of the state that the property would devolve upon it as a result of Mohan Lal being presumed to be dead and having left behind no legal heir is seriously in question. Such a matter could not have been adjudicated upon by the Collector by assuming to himself a jurisdiction which is not conferred upon him by law. 21 The principle that the law does not readily accept a claim to escheat and that the onus rests heavily on the person who asserts that an individual has died intestate, leaving no legal heir, qualified to succeed to the property, is founded on a sound rationale. Escheat is a doctrine which recognises the state as a paramount sovereign in whom property would vest only upon a clear and established case of a failure of heirs. This principle is based on the norm that in a society governed by the rule of law, the court will not presume that private titles are overridden in favour of the state, in the absence of a clear case being made out on the basis of a governing statutory provision. To allow administrative authorities of the state – including the Collector, as in the present case – to adjudicate upon matters of tittle involving civil disputes would be destructive of the rule of law. The Collector is an officer of the state. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. In contrast, a civil court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the court is taken away, either expressly or by necessary implication, by statute. In holding that the Collector acted without jurisdiction in the present case, it is not necessary for the court to go as far as to validate the title which is claimed by the petitioner to the property. The court is not called upon to decide whether the possession claimed by the trust of over forty-five years is backed by a credible title. The essential point is that such an adjudicatory function could not have been arrogated to himself by the Collector. Adjudication on titles must follow recourse to the ordinary civil jurisdiction of a court of competent jurisdiction under Section 9 of the Code of Civil Procedure 1908.

22 We may at this stage also advert to the provisions of the Administrators – General Act, 1963. The Act provides for the appointment of persons who are vested with the powers of an Administrator General. Section 2(a) defines the expression ‘assets’ thus :

"(a) "assets" means all the property, movable and immovable, of a deceased person, which is chargeable with and applicable to the payment of his debts and legacies, or available for distribution among his heirs and next of-kin".

The Administrator General is notified under Section 3.

Section 7 allows for the grant of letters of administration by the High Court to the Administrator General of the state, unless they are granted to the next of kin of the deceased. Section 7 reads as follows :

"7. Administrator-General entitled to letters of administration, unless granted to next-of kin :- Any letters of administration granted by the High Court shall be granted to the Administrator-General of the State unless they are granted to the next-of-kin of the deceased." Section 9 empowers the Administrator General to apply to the High Court for the administration of estates in specified circumstances :

"9. Right of Administrator-General to apply for administration of estates :-

(1) If- (a) any person has died leaving within any State assets exceeding rupees ten lakhs in value, and

(b) (whether the obtaining of probate of his will or letters of administration to his estate is or is not obligatory), no person to whom any court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such State for such probate, or letters of administration, and

(c) (in cases where the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925) , no person has taken other proceedings for the protection of the estate, the Administrator-General of the State in which such assets are, may, subject to any rules made by the State Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court letters of administration of the estate of such person.
(2) The Administrator-General shall not take proceedings under this section unless he is satisfied, that there is apprehension of misappropriation, deterioration or waste of such assets if such proceedings are not taken by him or that such proceedings are otherwise necessary for the protection of the assets." The Administrator General is statutorily empowered to move the High Court to protect the assets or estate of a deceased from dissipation.

Section 10 empowers the Administrator General to move the High Court to collect and take possession of the assets of a deceased person where there is imminent danger of misappropriation, deterioration or waste of assets :

"10. Power of Administrator-General to collect and hold assets where immediate action is required :-

(1) Whenever any person has died leaving assets within any State exceeding rupees ten lakhs in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator-General - (a) to collect and take possession of such assets, and

(b) to hold, deposit, realise, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

(2) Any order of the High Court under sub-section (1) shall entitle the Administrator General

(a) to maintain any suit or proceeding for the recovery of such assets;

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person;

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act; and

(d) to reimburse himself for all payments made by him to respect of such assets which a private administrator might lawfully have made." Under Section 11, the High Court is empowered to grant probate or letters of administration to any other person who appears and establishes his claim :

"11. Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator-General :- If, in the course of proceedings to obtain letters of administration under the provisions of Section 9 or Section 10, -

(a) any person appears and establishes his claim-

(i) to probate of the will of the deceased; or

(ii) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law; or

(b) any person satisfies the High Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in

which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925 (39 of 1925); or

(c) the High Court is satisfied that there is no apprehension of misappropriation, deterioration, or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets; the High Court shall – (1) in the case mentioned in clause (a), grant probate of the will or letters of administration accordingly;

(2) in the case mentioned in clause (b) or clause (c), drop the proceedings; and (3) in all the cases award to the Administrator-General the costs of any proceedings taken by him under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof." Section 12 postulates those eventualities in which administration can be granted to the Administrator General :

"12. Grant of administration to Administrator-General in certain cases :- If, in the course of proceedings to obtain letters of administration under the provisions of Section 9 or Section 10, and within such period as to the High Court seems reasonable, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of kin of the deceased, or satisfies the High Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925 (39 of 1925), and the High Court is satisfied that there is apprehension of misappropriation, deterioration, or waste of the assets or that the grant of letters of administration in such proceedings is otherwise necessary for the protection of the assets; or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law; the High Court may grant letters of administration to the Administrator-General." Under Section 14, the grant of letters of administration to the Administrator General can be revoked where an executor or next of kin of a deceased establishes a claim to probate or letters of administration in preference to the Administrator General :

"14. Recall of Administrator-General's administration and grant of probate etc., to executor or next-of-kin :- If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the High Court a claim to probate of will or to letters of administration in preference to the Administrator-General, any letters of administration granted in accordance with the provisions of this Act to the Administrator-General :

(a) shall be revoked, if a will of the deceased is proved in the State; (b) may be revoked, in other cases, if an application for that purpose is made within six months

after the grant to the Administrator-General and the High Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made; and probate or letters of administration may be granted to such executor or next-of-kin as the case may be." The effect of the grant of probate or letters of administration is provided by Section 20(1) which reads thus :

"20. Effect of probate or letters granted to Administrator-General :- (1) Probate or letters of administration granted by the High Court to the Administrator-General of any State shall have effect over all the assets of the deceased throughout India and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General."

23 The above provisions enacted by Parliament define the ambit of the powers vested in the Administrator General and the circumstances in which he can move the High Court. Essentially, the Administrator General steps in to protect the estate of a person who has died and no person to whom any court would have jurisdiction to commit the administration of the estate has come forth. The Administrator General is authorised by law to move the High Court to obtain letters of administration. Where the property or estate of the deceased is in imminent danger, the Administrator General can be empowered by the High Court to take immediate steps to safeguard the estate. While permitting the Administrator General to apply to the High Court for the grant of letters of administration, the law allows any other individual to appear and establish a claim before the High Court. Where a claim to probate or letters of administration in preference to the Administrator General is established, an order of revocation can be passed by the High Court. Such adjudicatory functions are entrusted to the High Court. The Administrator General, as a public official, is conferred with duties and obligations to secure and safeguard the administration of the estate left behind by a deceased individual in the circumstances adverted to in the statute. The legislation has not reserved a judicial power to the Administrator General. Parliament in its wisdom has made provisions to ensure that estates are not frittered away upon the death of persons who do not leave behind legal heirs, by allowing the Administrator General to invoke the jurisdiction of the High Court to safeguard such estates. The conferment of adjudicatory functions upon the High Court safeguards against an abuse of power and facilitates an adjudication of private claims.

24 In the present case, for the reasons indicated above, we have come to the conclusion that the Collector acted manifestly in excess of his jurisdiction and launched upon an adjudicatory exercise. This power was not vested in him. The counter affidavit filed in these proceedings relies upon the provisions of Sub-section 2 of Section 167 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in its application to the State of Uttarakhand. Sub- sections 1 and 2 of Section167 provide as follows :

"167 (1). The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall, with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances; and

(c) the transferee may remove other moveable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed." "167 (2). Where any land or other property has vested in the State Government under sub section (1) it shall be lawful for the Collector to take over possession over such or other property and to direct that any person occupying such land or other property be evicted therefrom. From the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary." 25 The power conferred upon the Collector by Sub-section 2 of Section 167 can be exercised only in the circumstances set out in Sub-Section 1. In the present case, the provision was clearly not attracted.

26 For the above reasons, we allow the appeal and set aside the impugned judgment of the High Court dated 15 May 2007. In consequence, the Writ Petition filed by the Appellant is allowed and the order dated 12 May 2003 passed by the Collector is quashed and set aside.

27 The Civil Appeal is disposed of in the above terms. There shall be no order as to costs.

.....J [N V RAMANA] .....J [Dr D Y CHANDRACHUD] New Delhi;

September 22, 2017