The State Of Rajasthan And Ors. vs Lord Nothbook And Ors. on 28 August, 2019

Author: R. Banumathi

Bench: Indira Banerjee, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6677 OF 2019
(Arising out of SLP(C) No.36771 of 2016)

STATE OF RAJASTHAN AND ORS. ….Appellants

VERSUS

LORD NORTHBROOK AND ORS. ….Respondents

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment dated 17.11.2016 passed by the High Court of Rajasthan at Jaipur Bench in DB Civil Writ Petition No.2713 of 1987 in and by which the High Court quashed the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 passed by the Deputy Secretary, Revenue, Govt. of Rajasthan, District Collector, Jhunjhunu and Tehsildar, Khetri respectively in the matter of taking over the properties of Sh. Raja Sardar Singh by the State under the Rajasthan Escheats Regulation Act, 1956.

3. Sh. Raja Sardar Singh expired on 28.01.1987 intestate and without any legal heirs. Sh. Raja Sardar Singh was a Bar at law from England, a member of the Constituent Assembly, a Rajya Sabha Member and also Ambassador to Laos and a highly educated person. He died on 28.01.1987 as a childless widower and at that time, he was a resident of No.5, Sardar Patel Marg, New Delhi. Sh. Raja Sardar Singh left behind him number of valuable properties such as Khetri House Delhi, Hotel Khetri Jaipur, Kothi Sukh Mahal, Kothi Jai Niwas, Kothi Amar Hall, Nizamat Building, Ajit Niwas Bagh Farm, Record Room, Havili Prohitji Wali, Dera Brijlaji Wala, Farrash Khana Chabutra, Tin Shed Mela Gugaji and Sabka Patwar Ghar, Jhunjhunu and other movable and immovable properties. On 16.02.1987, the Sub-Divisional Officer (SDO), Khetri sent a letter to the District Collector, Jhunjhunu stating that an information has been received that Sh. Raja Sardar Singh expired in Mumbai on 28.01.1987 without any legal heir and that he has executed one Will on

30.10.1985. Sh. Raja Sardar Singh executed a Codicil on 07.11.1985. Based on the Will/Codicil, a trust called "Khetri Trust" was constituted with four Trustees.

4. On 24.02.1987, one Dwarka Prasad Parik filed application before the Tehsildar, Jaipur stating that Sh. Raja Sardar Singh died without heirs and that there are several valuable properties left behind him. The said Dwarka Prasad alleged that after the death of Sh. Raja Sardar Singh, the Manager, Nirbhay Singh and other staff are removing the valuable articles by loading in the trucks and therefore, immediate action be taken which is necessary for taking the properties into State custody. The said Dwarka Prasad also prayed that the properties of Sh. Raja Sardar Singh be declared as the properties of the State and immediate action be taken for its management so that the same can be saved from displacement and removal.

5. Public Notice by the Tehsildar:- A probe was made upon the letter dated 16.02.1987 by one Mangilal who informed the District Collector, Jhunjhunu about the death of Sh. Raja Sardar Singh and that he died without any legal heir. Hence, the first condition for initiating proceedings under the provisions of Section 4 of the Rajasthan Escheats Act, 1956 i.e. "Upon receipt of information as to the existence within Tehsil of any property of which the Act applies. Whether or not in the possession of any person" has been satisfied. The SDO, Khetri has sent a report on 16.02.1987 to the District Collector, Jhunjhunu stating that Sh. Raja Sardar Singh expired in Mumbai on 28.01.1987 without any legal heir and that he has executed one Will by virtue of which a trust by name "Khetri Trust" was constituted and late Sh. Raja Sardar Singh has donated his movable and immovable properties to the said trust and the said report of the SDO has also made it clear that Sh. Raja Sardar Singh has no brother or sister nor any child and that he was a widower. On 27.02.1987, the Tehsildar, Jaipur brought out a Public Notice inter alia stating that any person who has any interest in the properties of the deceased Sh. Raja Sardar Singh, should be present before him. On 28.02.1987, the District Collector sent a letter to the Tehsildar to prepare the inventories of the moveable and immoveable properties of Sh. Raja Sardar Singh for the purpose of proceeding under the Rajasthan Escheats Regulation Act, 1956. On 04.03.1987, Naib Tehsildar issued a notice to Nirbhay Singh, Manager of Hotel Khetri informing him that he has been appointed as the Inquiry Officer and directing him to produce all the documents on 05.03.1987. In response to the said Notice, Nirbhay Singh, Manager on behalf of Khetri Trust filed response stating that Sh. Raja Sardar Singh, before his death, had vested his movable and immovable properties in Khetri Trust and that the Trustees are running the Hotel and that the properties of Sh. Raja Sardar Singh do not fall within the ambit of Article 296 of the Constitution of India or under the provisions of the Rajasthan Escheats Regulation Act, 1956 ("The Escheats Act").

6. The Tehsildar issued a Notice dated 07.03.1987 to Nirbhay Singh calling upon him to appear personally on 12.03.1987 and produce all the documents pertaining to the said properties or else it would be presumed that the properties which are in possession of Nirbhay Singh are completely unclaimed. The said Nirbhay Singh appeared before the Tehsildar on 12.03.1987 and filed his response informing about filing of Probate Case before the Delhi High Court and that the Trust is in actual possession of the Khetri House and the entire movable and immovable properties and that he is representing as Manager of the Trust. When the matters stood thus pending before the Tehsildar, the Trustees filed Testamentary Case No.26 of 1987 on 10.03.1987 before the High Court of Delhi for

probate of the Will.

7. To initiate the proceedings under the Escheats Act, the Collector addressed a letter dated 15.06.1987 to the Government of Rajasthan. After referring to the said letter of the Collector dated 15.06.1987, Dy. Secretary, Government of Rajasthan passed the order dated 03.07.1987 which reads as under:-

> "Government of Rajasthan Revenue (Group-3) Department No.10(4)/Raj/Group-3/G/87 Dated 3.7.1987 To District Collector, Jhunjhunu Sub: Regarding possession and ownership of movable and immovable properties of late Raja Bahadur Singh Khetri. Ref: Your letter No.1955/Nyay/87 dated 15.06.1987 Sir, From the captioned subject and contents of your order, it is deemed that Shri Raja Bahadur Singh had died intestate. The properties of late Raja Bahadur Sardar Singh would come under the Rajasthan Escheat Regulation Act 1956, therefore proceedings under the relevant provisions of Rajasthan Escheat Regulation Act 1956 be initiated in regard to the properties situated at Jhunjhunu and the concerned District Collectors be informed about the properties lying in other Districts. In regard to the properties situated outside the State of Rajasthan concerned State Government be informed.
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> After doing the needful, the undersigned will be informed.
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> R.S. Mittal Deputy Secretary Government of Rajasthan" After referring to the above proceeding of Government of Rajasthan, the District Collector vide letter dated 22.07.1987 addressing the Tehsildar, Khetri stated that the properties of deceased Sh. Raja Sardar Singh situated in the State of Rajasthan are governed by the provisions of the Escheats Act and directed that the proceedings under the Escheats Act be initiated in respect of properties of late Sh. Raja Sardar Singh of Khetri which are situated in Khetri, District Jhunjhunu. In the said letter, the District Collector further stated that the possession of the unclaimed properties be taken over in favour of the State and to take necessary action in this regard at the earliest. The letter of the District Collector also states that the other properties owned by Sh. Raja Sardar Singh in other States or abroad be collected and action be taken accordingly. Based on the said proceedings of the District Collector, the Tehsildar has taken possession of the properties in Khetri vide Spot Possession Report (31.07.1987). In the Spot Possession Report, it was mentioned that the seals of Khetri Trust were affixed on the gates and keys of some of the other properties are with Khetri Trust in Delhi. The Spot Possession Report also refers to leasing of some of the properties from the time of Sh. Raja Sardar Singh and running of a School in one of the properties. The immovable properties, in particular, the agricultural lands and orchards were attached by the proceeding dated 03.08.1987. The Tehsildar submitted a report to the SDO, Khetri containing a list of properties which were taken over in custody of the State. In the said Report, it was stated that some of the properties were under lock put by the Trust. The Tehsildar also sent another Report dated 24.05.1989 to the District

> Collector, Jhunjhunu containing a list of properties which were taken over in custody of the State and also that some of the properties were in lock and that the keys are with the Trust.

8. Other Proceedings:- Various cases have been filed in respect of movable and immovable properties of Sh. Raja Sardar Singh. First one was the application under Section 195 of the Indian Succession Act, 1925 and the application under Section 192 for the appointment of the Curator before the District Court at Jaipur. Though the details of these applications are not available in the materials placed before this Court, the same have been referred to in the letter of the SDO dated 15.04.1991.

9. Writ Petition No.2713 of 1987:- Parmeshwar Prasad filed Civil Writ Petition No.2713 of 1987 challenging initiation of proceedings under the Escheats Act and the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 by the Dy. Secretary, Revenue, Govt. of Rajasthan, District Collector, Jhunjhunu and Tehsildar, Khetri respectively. On 19.11.2001, the High Court of Rajasthan adjourned the proceedings in the said writ petition sine-die awaiting the decision of the Delhi High Court in Testamentary Case No.26 of 1987. The said writ petition has taken up by the High Court after fifteen years and was allowed by the impugned order.

10. Testamentary Case No.26 of 1987:- Based on the Will allegedly executed by Sh. Raja Sardar Singh on 30.10.1985, Parmeshwar Prasad and the Trustees of Khetri Trust have filed the Testamentary Case seeking for probate of the Will read with codicil dated 07.11.1985. The agnates of Sh. Raja Sardar Singh raised objections for grant of probate. During the course of the proceedings, the Delhi High Court was informed that the provisions of Rajasthan Escheats Regulation Act have already been invoked and that the State has taken possession of some of the properties of Sh. Raja Sardar Singh. By an elaborate judgment dated 03.07.2012, the Delhi High Court dismissed the Testamentary Case No.26 of 1987 and held that it is for the State of Rajasthan to decide in accordance with law in pursuance of the proceedings taken under the Rajasthan Escheats Regulation Act, 1956. The relevant observations made by the Delhi High Court in the said Testamentary Case will be shortly referred to at the appropriate place. The executors of the will/trustees have preferred an appeal against the said judgment dated 03.07.2012 before the Delhi High Court and the said appeal is pending. But no stay was granted by the Division Bench in the said appeal.

11. Application by Arjun Singh, father of Respondent No.8:

> Arjun Singh, father of Respondent No.8 claiming to be the agnate of the deceased, submitted his objections before the Tehsildar stating that the alleged Will dated 30.10.1985 is not legally valid and that the said Will has been executed due to the influence of Lady Olga Manning, a foreigner, who was close to Sh. Raja Sardar Singh.

12. Order of the Collector dated 02.02.2016:- The Collector has passed a detailed order on 02.02.2016 rejecting the claims of the Khetri Trust based on Will and also the claims of the agnates namely Gajendra Singh, Surender Singh, Hemender Singh, Nagender Singh and Yogendra Singh.

The District Collector has referred to the order of the Delhi High Court in Testamentary Case and various other proceedings and held that Sh. Raja Sardar Singh died intestate and issueless and therefore, Section 29 of the Hindu Succession Act read with Sub-section 9(b) of Section 6 of the Rajasthan Escheats Regulation Act, 1956 automatically comes into play and all properties left behind by Sh. Raja Sardar Singh shall vest in the State Government of Rajasthan. The District Collector directed that copy of the order be forwarded to the Public Prosecutor to be presented before the District Judge, Jaipur for obtaining a vesting order/further course of legal action as mandated under the Act.

13. Appeal before the Board of Revenue:- Against the order passed by the District Collector, in terms of Section 7 of the Escheats Act, Khetri Trust has filed appeal before the Board of Revenue and the Board of Revenue has stayed the order of the District Collector vide order dated 12.04.2016 and the said appeal is pending.

14. Impugned Order:- It is in this background, the High Court has taken up the Civil Writ Petition No.2713 of 1987 which was pending for about thirty years in which the trustees have challenged the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987. Though subsequent to those three communications/orders, various orders have come to be passed by the High Court, by the District Collector and the appeals pending before the High Court and the Board of Revenue, the High Court proceeded to quash those communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 passed by the Dy. Secretary, Revenue, Govt. of Rajasthan, District Collector, Jhunjhunu and Tehsildar, Khetri respectively by holding that the provisions of the Escheats Act have not been complied with and that the action by the State in taking over the possession of the properties of Sh. Raja Sardar Singh is arbitrary and unsustainable.

15. On behalf of the appellant-State of Rajasthan, learned Additional Solicitor General Mr. P.S. Narsimha has submitted that due to the absence of any rightful owner, State of Rajasthan has rightly initiated the proceedings under the Rajasthan Escheats Regulation Act, 1956. It was submitted that the High Court has not appreciated the purport of Sections 4 and 6 of the Escheats Act which vests the power with the concerned authorities to initiate proceedings under the Act and to take possession of the escheat properties and the High Court erred by ignoring the fact that the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 were in terms of the provisions of the Act. The learned Additional Solicitor General further submitted that the Trustees having filed the appeal against the dismissal of the Testamentary Case and the agnates having filed the appeal before the Board of Revenue challenging the order of the Collector, the High Court should have directed the parties to await till disposal of the appeal by the Delhi High Court and the appeal by the Board of Revenue. The learned Senior counsel further submitted that by the order dated 19.11.2001, the High Court having adjourned the Writ Petition No.2713 of 1987 sine-die awaiting the decision of the Delhi High Court, ought to have awaited the decision of the Delhi High Court in the appeal preferred against the judgment in the Testamentary Case. It was contended that after the three communication/orders which were under challenge in Writ Petition No.2713 of 1987, orders came to be passed by the courts, competent authorities and while so, the High Court erred in ignoring the subsequent judgments/orders and the impugned order is not sustainable.

16. Per contra, learned Senior counsel for the respondents Dr. A. M. Singhvi and Mr. Paras Kuhad submitted that there were agnates and cognates of the deceased of which the State was well aware and therefore, the properties of Sh. Raja Sardar Singh cannot be said to be lawaris-abandoned property. Learned Senior counsel submitted that for escheating the properties, there should be total absence of any claimant for a reasonable period of seven years and that the character of the property as an abandoned property should be conclusively established. By placing reliance upon Bombay Dyeing and Manufacturing Co., Ltd. v. State of Bombay and Others AIR 1958 SC 328, it was contended that power under Article 296 of the Constitution can be exercised only as long as there is no claimant and the property assumes the character of an abandoned property and that the case in hand cannot be said to be one of absolute failure of heirs. It was submitted that the onus to establish that the property is bona vacantia is upon the Government and the burden of proof is very high. Reliance was placed upon State of Bihar v. Radha Krishna Singh and Others (1983) 3 SCC 118, Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust Through Velji Devshi Patel v. Collector, Haridwar and Others (2017) 16 SCC 418. On behalf of the respondents, it was urged that initiation of the proceedings under the Escheats Act and taking over the possession thereof is erroneous as there are claims by the agnates and also by the Trustees. It was submitted that assuming that the Escheats Act was applicable, the possession was taken over from the Trust who was in "present and actual possession" which is in contravention of proviso to Section 4 of the Escheats Act. It was further submitted that taking over possession of the properties by the State from Kherti Trust is illegal and that the same is in violation to proviso to Section 4(1) of the Escheats Act.

17. I have carefully considered the submission and perused the impugned judgment and the judgment of the High Court of Delhi in Testamentary Case No.26 of 1987 and other materials on record. The following points arise for consideration:-

(i) Whether the High Court was right in saying that the initiation of proceedings under Rajasthan Escheats Regulation Act, 1956 is not maintainable? Whether the learned Judge was right in saying that even assuming that the Act is applicable, taking over possession of properties is in violation of the provisions of the Act?

(ii) Whether the High Court was right in quashing the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 by ignoring the various subsequent orders passed by the Delhi High Court and by the competent authorities under the Escheats Act?

(iii) When the appeal against the probate case is pending before the Division Bench of the High Court of Delhi and also the appeal against the order passed by the District Collector is pending before the Board of Revenue, whether the High Court was right in quashing the three communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 in and by which the proceedings were initiated in terms of the Rajasthan Escheats Regulation Act, 1956?

18. Contention of the respondents is that it is not a case of bona vacantia (failure of legal heirs) and the very invocation of proceedings under the Rajasthan Escheats Regulation Act, 1956 is not sustainable. Next limb of arguments is that even assuming that invocation of the Rajasthan Escheats Act is correct, the provisions of the Act have not been strictly followed by the State Government and the entire proceedings are vitiated. Let me consider the merits of the first contention that invocation of proceedings under the Act was not warranted as it was not a case of lawaris-abandoned property.

19. Escheat is a bona vacantia and can be exercised only in case of abandoned property:- Article 296 is the constitutional provision enabling vesting of the property with the State Government if a person dies intestate and without any heir qualified to succeed to his or her property. Section 29 of the Hindu Succession Act, 1956 embodies the principle of escheat. 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." 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 the Government.

20. Section 29 of the Hindu Succession Act comes into operation only on there being a failure of heirs. The word 'failure' used in Section 29 makes it clear that there must be a total absence of any heir to the person dying intestate. The absence of any heir is a pre-condition for initiation of the proceedings for escheating of the property to the Government.

21. It was held in State of Punjab v. Balwant Singh and Others 1992 Supp. (3) SCC 108 that the State Government 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". In Balwant Singh's case, the Supreme Court held as under:-

> "11. The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in to take the property.
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> 12. The State 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. In Halsbury's Laws of England, 4th ed. Vol. 17 para 1439 it is stated as follows:
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> "To whom land escheated.— Escheat in the case of death intestate before 1926 was to the mesne lord if he could be found but, as since 1290 sub-infeudation has been forbidden, in the great majority of cases there was no record of the mesne tenure, and the escheat was to the Crown as the lord paramount of the whole soil of the country."

> 13. Section 29, in our opinion, shall not operate in favour of the State if there is any other heir of the intestate. Indeed, Section 29 itself indicates that there must be failure of heirs. 'Failure' of heirs means the total absence of heirs to the intestate.....".

22. Contention of the learned Senior counsel appearing for respondents No.5 to 8 is that Section 4 applies only to the property described in Section 2(4) which refers to a property "vesting in the State". It was further submitted that the Rajasthan Escheats Act, 1956 applies only to properties vesting in the State qua ultima heres under Article 296 by escheat or as bona vacantia and thus, before initiation of any proceeding under the Act, the property must have acquired the character of an abandoned property.

23. Contention of the respondents No.5 to 8 is that the moment there is a claim, escheating does not arise. It was submitted that escheat is a bona vacantia and can be exercised only in case of abandoned property and "failure of heirs" and in the present case, there is no finding as to "failure of heirs". It was contended that for claim of escheat by the Government, it should be established that the property is in the nature of lawaris/abandoned property. In support of the contention, reliance is placed upon Bombay Dyeing's case, in which unpaid wages came to be accumulated for about three years. Three years' arrears were transferred to Labour Welfare Fund and remained there unclaimed for three years. Observing that merely because there was no claim for the unpaid wages for three years, does not mean that it became abandoned property. In Bombay Dyeing, this Court held as under:-

> "27. It remains to deal with the contention of the respondents that the impugned legislation is, in substance, one in respect of abandoned property, and that, by its very nature, it cannot be held to violate the rights of any person either under Article 19(l)(f) or Article 31(2). That would be the correct position if the character of the legislation is what the respondents claim it to be, for it is only a person who has some interest in property that can complain that the impugned legislation invades that right whether it be under Article 19(l)(f) or Article 31(2), and if it is abandoned property, ex hypothesis there is no one who has any interest in it. But can the impugned Act be held to be legislation with respect to abandoned property? To answer this question, it is necessary to examine the basic principles underlying such a legislation, and ascertain whether those are the principles on which the Act is framed. The expression "abandoned property" or to use the more familiar term "bona vacantia" comprises properties of two different kinds, those which come in by escheat and those over which no one has a claim. In Halsbury's Laws of England, 3rd Edn., Vol. 7, p. 536, para 1152, it is stated that "the term bona vacantia is applied to things in which no one can claim a property and includes the residuary estate of persons dying intestate". There is, however, this distinction between the two classes of property that while the State becomes the owner of the properties of a person who dies intestate as his ultimate heir, it merely takes possession of property which is abandoned. At common law, abandoned personal property could not be the subject of escheat. It could only be appropriated by the Sovereign as bona vacantia. Vide

> Holdsworth's History of English Law, 2nd Edn., Vol. 7, p. 495-96. In Connecticut Mutual Life Insurance Company v. Moore (333 US 541, 546) the principle behind the law was stated to be that "the state may, more properly, be custodian and beneficiary of abandoned property than any other person". Consistently with the principle stated above, a law relating to abandoned property enacts firstly provisions for the State conserving and safeguarding for the benefit of the true owners property in respect of which no claim is made for a specified and reasonable period, and secondly, for those properties vesting in the State absolutely when no claim is made with reference thereto by the true owners within a time limited."

24. Contending that the initiation of the proceedings under the Rajasthan Escheats Act cannot stand unless the conditions for escheat are satisfied, reliance was placed upon in Peirce Leslie and Co. Ltd. (In CA No.1174 of 1965) and Miss Violet Ouchferlong Wapshare and Others (In CA No.1935 of 1966) v. Miss Violet Ouchterlong Wapshare and Others (In CA No.1174 of 1965) and Peirce Leslie and Co. Ltd. and Others (In CA No.1935 of 1966) AIR 1969 SC 843.

25. Observing that escheat is a doctrine which recognizes the State as a paramount sovereign in whom the property would vest upon a clear case of failure of heirs, in Kutchi Lal (2017) 16 SCC 418, this Court held as under:-

> "20. .....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 the Government. Though the property devolves on the Government in such an eventuality, yet the Government takes it subject to all its obligations and liabilities. The State in other words does not take the property (at SCC p. 113, para 12) "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 Singh 1992 Supp (3) SCC 108. This principle from Halsbury's Laws of England 4th. Ed. Vol.17, Para 1439, 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. ....
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> "25. 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. …….. 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……" [Underlining added].

26. In Radha Krishna (1983) 3 SCC 118, this Court held as under:-

> "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."

27. In the light of the above principles, let us consider whether the State of Rajasthan was right in invocation of the Escheats Act, 1956 to take the properties of Sh. Raja Sardar Singh by escheat for want of heir or successor or as bona vacantia for want of a rightful owner. No doubt, the provisions of the Rajasthan Escheats Regulation Act, 1956 will be applicable only when the person dies intestate and/or is not succeeded by any of the person under Section 8 of the Hindu Succession Act or other succession laws.

28. There are two claims to the properties of the deceased Sh. Raja Sardar Singh:-

> • By Khetri Trust said to have been created by virtue of Will executed by Sh. Raja Sardar Singh dated 30.10.1985; and • By agnates of the deceased.

Let me consider whether in the facts and circumstances of the case, the properties of Sh. Raja Sardar Singh were bona vacantia justifying the right of the Government to take the properties by escheat as a case of "failure of heirs".

29. Sh. Raja Sardar Singh died on 28.01.1987. The Khetri Trust was created on 31.01.1987. The Trust deed was executed on 14.04.1987 in which eminent persons like Bhaskar Mitter-Chairman Exide Ltd., Narottam Sehgal-ICS Former Home Secretary to Government of India, Dr. Romila Thapar, the eminent historian and Vikram Lal-Chairman Eicher Ltd. have held the post of Trustees of the Khetri

Trust. In Testamentary Case No.26 of 1987, the High Court of Delhi has pointed out that over a period of time, Trustees changed and as on 08.07.2003, Lord Northbrook being son of Lady Olga Manning was made the Executor Trustee of the Will, apart from Maharaj Gaj Singh of Jodhpur. The executor of the Will viz. Parmeshwar Prasad had filed Testamentary Case No.26 of 1987 in March, 1987 under Section 276 of the Indian Succession Act, 1925 for grant of probate on the basis of the Will dated 30.10.1985 read with Codicil dated 07.11.1985. So far as the Khetri Trust is concerned, it has filed three interlocutory applications bearing Nos.5737-5739 of 2009. Trustees of Khetri Trust were impleaded as party pursuant to the order passed in interlocutory application No.5737 of 2009 – application for impleadment of the Trustees.

30. In Testamentary Case, the State of Rajasthan was also impleaded as a party because of bona vacantia i.e. for want of a rightful owner. The said interlocutory application bearing No.867 of 1995 for impleadment filed by the State of Rajasthan was dismissed by the Single Judge against which an appeal was preferred by the State of Rajasthan before the Division Bench in F.A.O. (OS) No.166 of 1996. By order of the Division Bench dated 08.11.1996, the State of Rajasthan was ordered to be impleaded as a party. But the State of Rajasthan was only permitted to address the arguments on the basis of the existing records.

31. Upon detailed consideration of oral and documentary evidence adduced by the parties, by a detailed order dated 03.07.2012, the High Court of Delhi had dismissed the Testamentary Case No.26 of 1987 and held that "the petitioners-executors of the Will were not able to establish execution of the Will dated 30.10.1985 and the Codicil dated 07.11.1985 in accordance with law and that the executors failed to dislodge the suspicious circumstances surrounding the Will." The relevant findings of the High Court are as under:-

> "101.1 That the petitioners have not been able to prove the Will Exhibit P-1 and the Codicil Exhibit P-3. The Will is not proved on account of the fact that the testimony of PW-1, P.N. Khanna and RW-8 is dramatically opposite. RW-8 has no reason to speak untruth, which will benefit him personally in any manner whatsoever.
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> ..... 101.4 That the Will which is executed by the deceased/testator is incomplete and lacks material particulars. It talks about bequeathing immovable and movable properties to the Trust mentioned "herein below" and no details of the properties are mentioned in the Will itself nor are the copies of the income-tax return or the wealth-tax return attached as the Will says that details of the properties are given therein. The petitioners have independently failed to prove the said documents." Against the said judgment dismissing Testamentary Case, the Trustees had preferred an appeal before the High Court of Delhi and the same is pending in which, no stay was granted.
>
> 32. In the said Writ Petition being WP No.2713 of 1987, the Trust challenged three communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 basing its claim upon the Will and that they had filed the probate case before the High Court of Delhi which was dismissed. Once the decision of the High Court of Delhi in the

> probate case has gone against the Trust, the Trust has no semblance of right, title and interest in the property, unless the Trust succeeds in the pending testamentary appeal, the Trust has no right to lay claim in the properties under escheat. The Trust having no right in the property, appears to have now taken up the cause of agnates, which the High Court, in my considered view, did not keep in view.
>
> 33. In the Writ Petition No.2713 of 1987, the Trustees of Khetri Trust having challenged three communication/orders initiating the proceedings under the Escheats Act, 1956 represented to the High Court that they had filed a probate case before the High Court of Delhi and requested the matter be adjourned. Upon consideration of the representation made by the Trustees of Khetri Trust that a probate case is pending, the High Court of Rajasthan by its order dated 19.11.2001 adjourned the Writ Petition sine-die awaiting the decision of the Delhi High Court.

The Trust thus, chose to seek an adjournment in the Writ Petition challenging the initiation of the proceedings under the Act till the final decision of the probate case. Once the decision in the probate case had gone against them, unless they succeed in the appeal, Khetri Trust has no semblance of right to lay a claim over the properties.

34. The agnate such as Gaj Singh Alsisar-respondent No.8 and other agnates viz. Surender Singh, Hemender Singh, Nagender Singh and Yogendra Singh have filed their objections resisting grant of probate of the Will dated 30.10.1985. Subsequently, all of them have withdrawn their objections. Regarding the conduct of the agnates withdrawing their objections, observing that the reasons for such withdrawal is inexplicable, in the concluding para, the Delhi High Court in its judgment dated 23.11.2012 held as under:-

> "……101.7 There were many objectors who had raised objection to the grant of probate/the letter of administration but actually each one of them withdrew. The reasons for withdrawal by them are inexplicable. No credible reason for the same has been given. This makes the Court to draw the inference that some forces were behind the scene which made them withdraw their objections leaving the field open for the petitioners but for the opposition of the State of Rajasthan." As far as the objection of Gaj Singh Alsisar-respondent No.8, in the probate proceedings, he subsequently withdrew his claim/objection on 10.02.2009 suo moto.

35. So far as other objectors are concerned, in probate case the High Court of Delhi observed as under:-

> "16. After filing of the probate petition, a number of objections were filed in response to the citation published in the "Statesman" on 17.04.1987, which had a wide circulation including in the State of Rajasthan, where most of the properties were situated. These objections were filed by the persons, namely, Rajender Singh, who died after filing of the objection and was represented by his legal heirs, Hemender Singh, Nagender Singh and Shobha Kanwar. The other objections were filed by Arjun

> Singh, Surender Singh, Narender Singh, Laxman Singh, Dwarka Prasad Parekh and Raghuvir Singh. Out of these objectors, except Raghuvir Singh, the rest of the objectors withdrew their objections by filing applications before the court on 10.02.2009. So far as Raghuvir Singh is concerned, he was stated to be incarcerated in connection with some criminal case registered against him in Jaipur Central Jail, who initially persisted with his objections and made allegations that the Khetri Trust and other entities had fraudulently fabricated documents and sold various properties of Raja's Estate, a number of times, however, before the start of arguments on the merits of the petition, Raghuvir Singh also withdrew his objections." As observed by the District Collector, there were number of objectors to the grant of probate in favour of Khetri Trust and all of them have gradually withdrawn their objections and the conduct of the agnates raises suspicion on their bonafide. When the agnates/other persons claiming right in the estate of Sh. Raja Sardar Singh have withdrawn their objections, naturally the inference is that they have accepted the claim/right of Khetri Trust, which claims through the Will. An inference has to be drawn against the persons that they have no right of claim in the properties of Sh. Raja Sardar Singh. The so called agnates or cognates cannot adopt double stand i.e. one claiming right in themselves and another allowing Khetri Trust to claim through the Will. It is also to be pointed out that the respondents No.8 and 9 and respondent No.6-Late Rajender Singh have not produced any document showing their status as agnates nor initiated any proceeding for declaration of their status.

36. Contention of the respondents is that the condition precedent for initiation of proceedings under the Escheats Act is "failure of heirs" and there is no finding by the authorities as to "failure of heirs" and therefore, the proceedings under the Escheats Act could not have been initiated. It was submitted that there was no enquiry conducted to satisfy the authorities as to "failure of heirs" to succeed to the properties and there was no finding as to "failure of heirs" and in the absence of finding as to "failure of heirs", the proceedings initiated under the Escheats Act was wholly jurisdiction and hence, the High Court rightly quashed the orders dated 03.07.1987, 22.07.1987 and 03.08.1987.

37. There is no merit in the contention of the respondents that there was no enquiry and satisfaction of the authorities as to "failure of heirs" before initiating proceedings under the Escheats Act. As pointed out earlier, the Sub-Divisional Officer, Khetri has sent a report dated 16.02.1987 to the District Collector, Jhunjhunu that Sh. Raja Sardar Singh expired in Mumbai on 28.01.1987 without any legal heir and that he has executed one Will by virtue of which Khetri trust was constituted. The SDO's report also states about the absence of brother or sister or any child or other legal heirs. The report of the SDO reads as under:-

> OFFICE OF THE SUB DIVISIONAL OFFICER KHETRI No.51/P.A./87 Dated 16.2.1987 To, District Collector, Jhunjhunu Sir, That as per the information received vide letter dated 11.2.1987 of Rajya Sabha, New Delhi, Raja Bahadur Shri Sardar Singh Khetri has expired in Mumbai on 28.1.1987 without any legal heir. He has executed only one will by virtue of this a Khetri Trust was constituted, the trust

having four trustees and late Sardar Singh Ji has donated his movable and immoveable property to the Trust.

Shri Sardar Singh has no brother or sister nor any child. He has divorced his wife. His father Amar Singh was adopted from Alsisar as his grandfather Ajit Singh had only one son Jai Singh, who died in minor age. Grandfather Shri Sardar Singh had two daughters one of them was married at Shahpura and other was married at Pratapgarh and both were expired, but there is a possibility of their children be alive.

Sd/-Mang ilal

38. The State Government through Tehsildar, Jaipur issued a notice dated 27.02.1987 to general public at large stating that the estate of Sh. Raja Sardar Singh has been declared as escheat since he died without legal heirs. As seen from the communication of Naib Tehsildar dated 04.03.1987 and 07.03.1987 addressed to Sh. Nirbhay Singh, an enquiry was conducted by Nair Tehsildar as to lawaris property of Sh. Raja Sardar Singh. The letter dated 03.07.1987 from the Deputy Secretary to District Collector, Jhunjhunu was in reference to the letter dated 15.06.1987 sent by the District Collector, Jhunjhunu to the Deputy Secretary by which the District Collector, Jhunjhunu had apprised about the factual position of the investigation conducted by him in compliance of the procedure laid down under Section 4 of the Escheats Act. There is no merit in the contention of the respondents that the initiation of the proceedings under the Escheats Act was done without following the procedure laid down by the law and without enquiry and the finding as to “failure of heirs”. The report of the SDO dated 16.02.1987 and the letter of the District Collector, Jhunjhunu dated 15.06.1987 addressed to the Government of Rajasthan shows that in compliance of the provisions of the Escheats Act, an enquiry was conducted and the authorities satisfied themselves as to “failure of heirs” before initiating action under Escheats Act. The materials on record show that the proceedings under the provisions of Escheats Act has been initiated only after making proper enquiry about possible legal heirs of Sh. Raja Sardar Singh and on finding about the absence of legal heirs, the authorities satisfied themselves that the properties are bona vacantia. In my view, due procedure was followed by the concerned officials as per the Escheats Act following the provisions of Section 4 of the Escheats Act and only after ascertaining that there was “failure of heirs”, the inventories of the properties were prepared and possession was taken over on all the vacant properties and mangers were appointed for the requisite purposes.

39. Deceased died way back in the year 1987. Till this date, the agnates have not instituted any suit or proceedings to establish their status nor obtained any declaration from the competent authorities. In the absence of any document declaring status of respondents No.4 to 8 as cognates/agnates of Sh. Raja Sardar Singh, State of Rajasthan cannot be faulted for initiating action under the Escheats Act, 1956 treating the properties of Sh. Raja Sardar Singh as lawaris for want of heir or successor or as bona vacantia. Moreover, it is not the case of the respondents No.4 to 8 that they represent all the agnates. As discussed earlier, no claimant came forward before the Tehsildar; only Nirbhay Singh who claimed as Manager of the Khetri Trust appeared before the Tehsildar. Considering the facts and circumstances of the case, initiation of proceedings under the Escheats Act cannot be said to be erroneous warranting interference.

40. In Re: Compliance of the provisions of the Rajasthan Escheats Regulation Act, 1956:-

> The provisions of the Rajasthan Escheats Act, 1956 regulate the procedure for initiation of proceedings and making of enquiries in the matter of lawaris properties vesting in the State of Rajasthan qua ultima heres under Article 296 of the Constitution of India by escheat or as bona vacantia. The Act applies to the properties vesting in the State. Section 2(4) of the Rajasthan Escheats Regulation Act, 1956 defines "property to which this Act applies" which reads as under:-
>
> Section 2 – Definitions – (4) "Property to which this Act applies" means any property vesting in the State qua ultima heres under Article 296 of the Constitution of India by escheats or as bona vacantia.
>
> Section 3 of the 1956 Act shows that the general superintendence of the properties to which this Act applies vests in the Collector and the Board can also give directions to the Collector. These directions can be given for carrying out the provisions of the Act.

41. The Rajasthan Escheats Regulation Act is a complete Code in itself. The preamble sets out the scope and ambit of the statute. The Act being a comprehensive legislation sets out the entire scheme relating to the constitutional power under Article 296 and provides for:- a) the making of enquiries; b) for custody and disposal; and c) properties vesting in the State under Article 296 of the Constitution. The scope of the Act is to:- a) determine the rightful owner and to restore the property in his/her favour; b) secure and safeguard the property pending under such enquiry;

c) adjudicate upon the contesting claims prima facie, at the same time enabling the properties to avail remedies of Civil courts; and finally d) pass orders of vesting after giving opportunities to everybody and after holding a detailed enquiry.

42. When we consider the scheme of the Act, in particular, Section 4, it provides that when the Tehsildar receives information as to the existence within Tehsil of any property to which this Act applies, whether or not in the possession of any person, the Tehsildar shall – a. ascertain whether or not there is any person entitled to such property;

b. prepare an inventory thereof showing the prescribed particulars;

c. take over possession of it in the prescribed manner;

-and-

d. make a report of the Collector.

As per the proviso to Section 4 of the Act, if the property is in the 'present possession of any person', such possession shall not be disturbed.

43. As pointed out earlier, as against the order passed by the Collector (dated 02.02.2016), the Trust has preferred the appeal before the Board of Revenue and the same is pending, all the questions including the compliance of the provisions of the Escheat Act, 1956 are raised in the said appeal. We would not have ventured to go into the merits of the contention as to the compliance or otherwise of the provisions of the Escheats Act, 1956; since the High Court has quashed the communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 passed by the Deputy Secretary, Revenue, District Collector and the Tahsildar respectively holding that the provisions of the Escheats Act, 1956 has not been complied with, we are called upon to examine the merits of the contentions raised and examine whether there was proper compliance of the provisions of the Escheats Act, 1956 for initiation of the proceedings of the Act. If we do not examine the merits of the contention raised in this appeal, the findings of the High Court would stand and the appropriate forum will not be in a position to consider the matter on merits. I have to therefore necessarily proceed to examine the merits of the contention advanced by the parties as to the compliance or otherwise of the provisions of Escheats Act, 1956.

44. As discussed infra, the provisions of Section 4 of the Rajasthan Escheats Regulation Act have been substantially complied with. As pointed out earlier in para (4), a public notice was issued inviting the interested persons to present themselves before the Tehsildar and produce materials to prove their right. The Naib Tehsildar thereafter issued notice dated 07.03.1987 to Nirbhay Singh directing him to produce all documents with proof. From the materials, it is seen that the inquiry which was conducted by the Tehsildar is also in compliance of Section 4 of the Act.

45. As elaborated earlier in paras (4) to (6), a public notice was issued on 27.02.1987 by the Tehsildar, Jaipur calling upon persons who claim interest or right in the properties of Sh. Raja Sardar Singh to present himself before his office on 04.03.1987 with entire documents or otherwise, it would be presumed that the Khetri House and other properties of Sh. Raja Sardar Singh are lawaris and the same shall be taken to the custody of the State. Further, it can be seen from the letter dated 04.03.1987 that the Naib Tehsildar, Jaipur was appointed as Inquiry Officer of all properties of Sh. Raja Sardar Singh situated at Jaipur. The Tehsildar issued a notice to Nirbhay Singh/Manager of Hotel Khetri House on 07.03.1987 calling upon him to personally appear and produce the entire records of the properties under his occupation. He was also informed that if he does not appear and produce the documents, it would be presumed that the properties are lawaris. After referring to the letter of the Collector dated 03.07.1987, the Dy. Secretary to the State Government directed appellant No.3-Collector, Jhunjhunu to initiate proceedings under the Act as it was deemed that the deceased died intestate. The letter dated 03.07.1987 from Dy. Secretary to District Collector, Jhunjhunu to initiate proceedings under the Act was in reference to the letter dated 15.06.1987 sent by the District Collector, Jhunjhunu to the Dy. Secretary by which the District Collector had apprised about the factual position of the investigation conducted by it in view of the procedure laid down under Section 4 of the Act. By letter dated 22.07.1987, the Tehsildar Khetri was directed to initiate proceedings under the Rajasthan Escheats Act with respect to properties situated in Khetri and also to collect details of properties situated outside the State of Rajasthan. By attachment order dated 03.08.1987, immovable properties i.e. agricultural lands and orchards in village Hada Fatehpura was taken over. By cumulative reading of the contents of above various proceedings, it is clear that in accordance with provisions of the Act, the concerned officials first made inquiry to

ascertain whether there was any legal heir of Sh. Raja Sardar Singh; issued notices and then prepared the inventories and after the spot inspection, attached the properties and taken over the possession of the vacant properties and submitted report to the Collector. The provisions of the Escheats Act, 1956, in our view, has been substantially complied with.

46. The learned Senior counsel for the respondents submitted that the Khetri Trust was in possession of the property of Sh. Raja Sardar Singh and the possession was taken over from the Trust by the Tehsildar in purported proceedings under Section 4 of the 1956 Act. It was further contended that even assuming that the Act was applicable, the possession was taken over from the Trust thereby contravening the proviso to Section 4(1) of the Act which provides that "if such property is in the present possession of any person, such possession shall not be disturbed". Contending that the Trust was in possession of the property of Sh. Raja Sardar Singh and that the State Government through Tehsildar had taken over the possession, the learned Senior counsel for the respondents inter-alia made the following submissions:-

> • Immediately after the demise of Sh. Raja Sardar Singh on 28.01.1987, vide letter dated 14.02.1987, Parmeshwar Prasad, one of the Trustees addressed letter to SDO, Khetri informing about the death of Sh. Raja Sardar Singh and his bequest in favour of the Trust.
>
> • Nirbhay Singh vide letter dated 05.03.1987 informed the Naib Tehsildar, Jaipur that the possession of the properties of Sh. Raja Sardar Singh lied with the Trust and that Nirbhay Singh is the Manager of the Trust and was in actual possession of movable and immovable properties in Khetri House where the Hotel was being run.
>
> • The Spot Possession Report dated 31.07.1987 indicates that the Trust is in "present possession" of the Khetri House i.e. there were five seals of Khetri Trust on the ground floor; three seals of Khetri Trust on the upper floor; seals of Khetri Trust were found affixed on both the gates and supervisors have been deputed for supervision thereof. It also states that keys of the kothis are with the office of Khetri Trust in Delhi.
>
> The learned Senior counsel submitted that in view of the above facts, it is beyond any doubt that the properties of the deceased were "in present possession of the Trust and that such possession was not only disturbed but destroyed by the State taking over the possession of the properties".

47. Of course, as per the Spot Inspection Report dated 31.07.1987, the property – Khetri House was found with locks with seal of Khetri Trust was affixed. As per the Spot Inspection Report nobody was found in physical possession of the property at the time of inspection. Upon consideration of these submissions inter-alia, the questions arising for determination are

(i)Whether Khetri Trust was in "present possession" of the property at the time of inspection and whether mere affixing of seal could lead to all inference that the Khetri Trust was in present

possession?; (ii) Whether summoning of Nirbhay Singh was in his capacity as Manager of the Hotel Khetri or agent or representative of Khetri Trust?; and (iii) Whether the order passed by the District Collector under Section 6 is in due compliance of the provisions of the Act of Rajasthan Escheats Act, 1956?

48. As against the order passed by the District Collector on 02.02.2016, the appeal is preferred before the Board of Revenue and the same is pending while upholding the invocation of the provisions of Rajasthan Escheats Regulation Act, 1956 in my considered view, the above contentions ought to be raised before the Board of Revenue and the Board of Revenue shall consider the same on its own merits.

49. Challenging the initiation of proceedings under Escheats Act 1956, the Trustees have filed Writ Petition No.2713 of 1987 way back in the year 1987 and the same was pending for about three decades. In 2001, the writ petitioners themselves sought for an adjournment on the ground of pendency of probate case before the Delhi High Court and the High Court also adjourned the writ petition sine-die. Thereafter, the writ petition remained pending for quite some time. As discussed earlier, three communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987 and subsequently, number of other orders came to be passed for taking possession of the properties of Sh. Raja Sardar Singh. The Delhi High Court dismissed the probate petition filed by the Khetri Trust by the judgment dated 03.07.2012 and the appeal filed by the Trust against the said judgment has been admitted by the Division Bench of the Delhi High Court and the same is pending. Under Section 6 of the Escheats Act, 1956, the Collector passed the order on 02.02.2016 dismissing the objections of the Trust on the basis of the order passed by the Delhi High Court in probate proceedings. The claim of agnates was also rejected by the District Collector on the ground that they had withdrawn their objections in the probate proceedings and are thus estopped from making any further claim.

50. Challenging the order passed by the District Collector, appeal has been preferred before the Board of Revenue and the same is pending. The Board of Revenue stayed the order of the District Collector by the order dated 12.04.2016. It was thereafter, the High Court had taken up the Writ Petition No.2713 of 1987 and passed the impugned order quashing the three communication/orders. When the appeals were pending before the Delhi High Court and before the Board of Revenue involving disputed questions, the High Court, in my view, ought to have directed the parties to avail efficacious alternative remedy. The High Court, in my view, ignoring the subsequent events that the respondents-agnates have withdrawn their objections in the probate petition and dismissal of the probate petition and the appeals pending before the Delhi High Court and appeal pending before the Board of Revenue erred in quashing the three communications/orders and directing the State to hand over the possession of the properties to the respondents.

51. Under Article 226 of the Constitution of India, the High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions; one of which is an effective and efficacious remedy available. When efficacious alternative remedy is available, the High Court would not normally exercise the jurisdiction. However, alternative remedy will not be a bar at least in three instances:-

(i) where writ petition is filed for enforcement of any of the fundamental rights;

(ii) where there is a violation of the fundamental right or principles of natural justice; and

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged; [vide Harbanslal Sahnia and Another v. Indian Oil Corpn. Ltd. and Others (2003) 2 SCC 107].

52. Notwithstanding the availability of alternative remedy, having regard to the facts of the case, the High Court has a discretion to entertain or not to entertain a writ petition. But in the present case, while considering correctness of the communications/orders issued way back in 1987, the High Court should have taken into consideration the subsequent events viz., the judgment passed by the High Court of Delhi in Testamentary Case and the order passed by the District Collector under Section 6 of the Act and the pendency of appeals before the High Court and Board of Revenue. Challenge to the initiation of the proceedings under the Rajasthan Escheats Regulation Act, 1956 is already a subject matter of appeal before the Board of Revenue. Based on the Will, whether the Trust has a right to claim the properties of Sh. Raja Sardar Singh is also a subject matter of appeal before the Delhi High Court. While so, exercising jurisdiction under Article 226 of the Constitution of India, the High Court ought not to have gone into the correctness of three notices issued on 03.07.1987, 22.07.1987 and 03.08.1987 which themselves culminated into various final orders. The impugned order takes away the very foundation of the order passed by the District Collector which is subject matter of the appeal pending before the Board of Revenue. There are serious disputed questions of facts especially whether there was contravention of Proviso to Section 4 and in such view of the matter, the High Court ought not to have gone into the correctness of three communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987. The High Court, in my considered view, ought to have directed the parties to work out the remedy before the competent court/authority.

53. I summarise my conclusion as under:-

(i) Since the Testamentary Case No.26 of 1987 then pending before the High Court of Delhi for grant of probate of the Will, has been dismissed and the testamentary appeal is pending before the High Court, there is no rightful owner as per the Will.

(ii) Having withdrawn their objections in the probate proceedings, respondent Nos.5 to 9 are estopped from making any claim in the properties of Sh. Raja Sardar Singh till they establish their right in a court of law.

(iii) The provisions of the Escheats Act, 1956 was initiated only after enquiring about the legal heirs of Sh. Raja Sardar Singh and before initiation of proceedings under the Escheats Act, the authorities satisfied itself as to “failure of heirs” of Sh. Raja Sardar Singh and that the properties are bona vacantia.

(iv) The persons claiming as agnates have not established their status in a court of law recognising them as rightful owners.

(v) There was issuance of public notice and also to private individuals, before the State of Rajasthan took over the estate of Sh. Raja Sardar Singh by escheat. The provisions of the Rajasthan Escheats Regulation Act, 1956 have been substantially complied with.

(vi) The State of Rajasthan was right in treating the property as 'bona vacantia' and right in initiating the proceedings under the Rajasthan Escheats Regulation Act, 1956.

(vii) Challenge to the initiation of the proceedings under the Rajasthan Escheats Regulation Act, 1956 is already a subject matter of appeal before the Board of Revenue.

Based on the Will, whether the Trust has a right to claim the properties of Sh. Raja Sardar Singh is also a subject matter of appeal before the Delhi High Court. While so, exercising jurisdiction under Article 226 of the Constitution of India, the High Court ought not to have gone into the correctness of three notices issued on 03.07.1987, 22.07.1987 and 03.08.1987 which themselves culminated into various final orders.

(viii) There are serious disputed questions of facts especially whether there was contravention of Proviso to Section 4 and in such view of the matter, the High Court ought not to have gone into the correctness of three communications/orders dated 03.07.1987, 22.07.1987 and 03.08.1987.

54. In the result, the impugned order of the High Court in Writ Petition No.2713 of 1987 is set aside and this appeal is allowed with the following directions and observations:-

(i) The questions whether the Trust was in present possession of the Khetri House and other properties and that it ought not to have been disturbed in terms of proviso to Section 4 of the Act, have to be examined and determined by the Board of Revenue before whom the appeal against the order of the District Collector is pending;

(ii) The question whether there is contravention of proviso to Section 4 of the Act, has to be determined by the Board of Revenue in the appeal pending before the Board of Revenue. The further question whether there was due compliance of Section 6 of the Act is also to be examined by the Board of Revenue?

Whether Khetri Trust has a right to claim the properties of Sh. Raja Sardar Singh based on the Will dated 30.10.1985, is a subject matter of appeal before the Delhi High Court. It is made clear that this judgment and also the conclusion of the Board of Revenue will, however, be subject to the decision of the Delhi High Court in Testamentary Appeal pending before the Delhi High Court. Parties shall bear their respective cost.

.....J. [R. BANUMATHI] New Delhi;

August 28, 2019.

REPORTABLE THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 6677 OF 2019 (ARISING OUT OF SLP (C) NO. 36771 OF 2016) State of Rajasthan and Ors. ... Appellants VERSUS Lord Northbook and Ors. ...Respondents JUDGMENT Indira Banerjee, J.

I have gone through the Judgment of my esteemed sister, but I have not been able to persuade myself to agree that this appeal be allowed.

2. This appeal is against a Judgment and Order dated 17.11.2006 passed by the Jaipur Bench of the High Court of Judicature of Rajasthan, allowing a writ petition being Civil Writ Petition No.2713 of 1987 filed by the respondents, who claim to be the trustees under a Will executed by Late Raja Bahadur Sardar Singh of Khetri, (hereinafter referred to as 'Raja Bahadur') and directing that the properties left behind by Raja Bahadur be made over to the writ petitioners.

3. The facts giving rise to the writ petition have been narrated in the judgment of my esteemed sister. Raja Bahadur, a childless widower died on 28.1.1987 leaving inter alia the following properties:-

> "S.No. Details of the property District Name of the village & township 1 Khetri House, 5 Sardar Patel Delhi New Delhi Road 2 Hotel Khetri House Jaipur Jaipur city 3 Kothi Sukh Mahal Jhunjhunu Khetri 4 Kothi Jai Niwas Jhunjhunu Khetri 5 Kothi Amar Hall Jhunjhunu Khetri 6 Nizamat Tehsil Building Jhunjhunu Khetri 7 Ajit Niwas Bagh Farm Jhunjhunu Khetri 8 Record Room Jhunjhunu Khetri 9 Haveli Prohitji Wali Jhunjhunu Khetri 10 Dera Brijlalji Wali Jhunjhunu Khetri 11 Farrash Khana Jhunjhunu Khetri 12 Chabutra inside Town Jhunjhunu Khetri 13 Tin shed Mela Gugaji Jhunjhunu Mehara Jatuwas 14 Sabka Patwar Ghar Jhunjhunu Papurna"

4. On 30.10.1985, that is about one year and three months before his death, Raja Bahadur had executed a Will, bequeathing his properties to a Trust to be known as Khetri Trust, of which persons named in the Will were to be Trustees. On 31.1.1987, that is about three days after the death of Raja Bahadur, the Khetri Trust was created.

5. On 14.2.1987, Mr. Parmeshwar Prasad, the original writ petitioner and one of the trustees named in the Will informed the Competent Authority, being the Sub Divisional Officer (SDO), khetri that Raja Bahadur had expired on 28.1.1987. An attested copy of the Will executed by Raja Bahadur was forwarded to the SDO.

6. By a letter dated 16.2.1987, the SDO Khetri informed the District Collector, Jhunjhunu of the death of Raja Bahadur and the Will said to have been executed by him. In the aforesaid letter the SDO indicated the possibility of existence of cognates of the deceased.

7. It is the case of the appellants that, on 24.2.1987, one Dwarka Prasad Parik filed an application before the Tehsildar, stating that Raja Bahadur had died without heirs, leaving several valuable properties, and praying that the properties of Raja Bahadur be declared as properties of the State.

8. On 27.2.1987, the Tehsildar, Jaipur published a Public Notice, calling upon persons interested in the properties of Late Raja Bahadur to appear before him. On 4.3.1987, the Tehsildar issued notice to Nirbhay Singh of his appointment as Inquiry Officer to enquire about the movable and immovable properties of Late Raja Bahadur Sardar Singh and directed the said Nirbhay Singh to produce all documents before him with proof on 12.3.1987, failing which it would be assumed that all the properties in possession of Nirbhay Singh were unclaimed.

9. In the meanwhile, on 10.3.1987 the trustees filed a petition being Probate Petition No.26 of 1987 before the Delhi High Court for probate of the Will said to have been executed by Late Raja Bahadur.

10. One Arjun Singh, father of the respondent No.8, claiming to be an agnate of the deceased, and others filed objections opposing the grant of probate of the Will executed by Raja Bahadur.

11. In the meanwhile, by a letter dated 12.3.1987, Nirbhay Singh responded to the said notice dated 4.3.1987, reiterating that pursuant to the Will executed by Raja Bahadur, the trustees of Khetri Trust were in real and lawful possession of the entire properties of Late Raja Bahadur Singh, and that they had initiated proceedings for probate being Testamentary Case No.26 of 1987 in the Delhi High Court.

12. By a communication dated 3.7.1987 addressed to District Collector, Jhunjhunu the Deputy Secretary to the Government of Rajasthan informed the District Collector that Raja Bahadur was to be deemed to have died intestate and the Hindu Succession Act would be applicable to the properties left by him.

13. By an Order No.2585/Nyaya/07 dated 22.7.1987, the Collector, Jhunjhunu directed the Tehsildar, Khetri to initiate proceedings under the Rajasthan Escheats Regulation Act, 1956 (hereinafter referred to as “The Escheats Act”) in respect of the properties left by Late Raja Bahadur.

14. On 31.7.1987, the Tehsildar took over possession of the properties of Raja Bahadur and prepared a Spot Possession Report. On 3.8.1987, possession was taken of the properties specified in a compliance report dated 3.8.1987 submitted by the Tehsildar to the Collector. On 29.9.1987, the Tehsildar, Jaipur took possession of Khetri House Hotel from Nirbhay Singh.

15. The respondents and/or their predecessor-in-interest filed the abovementioned writ petition challenging the initiation of proceedings under the Escheats Act and the consequential action of taking over possession of the properties of Raja Bahadur under the provisions of the said Act, which has been allowed by the judgment and order impugned in this appeal, and in my view, rightly.

16. The Escheats Act as per the preamble of the said Act, is an Act to regulate the making of enquiries in the matter of properties vesting in the State of Rajasthan qua ultima heres under Article 296 of the Constitution of India or escheats or as bona vacantia and provides for custody and disposal thereof.

17. A perusal of the Preamble makes it amply clear that the Escheats Act applies only to properties vesting in the State qua ultima heres under Article 296 of the Constitution of India as bona vacantia.

18. The vesting of property in the State as bona vacantia under Section 296 for failure of heirs, is sine qua non for the applicability of the Escheats Act and statutorily prescribed jurisdictional requirement for Section 4 read with Section 2(4) of the said Act.

19. Section 2(4) of the Escheats Act defines "property to which this Act applies" to mean any property vesting in the State qua ultima heres under Article 296 of the Constitution of India by escheats or as bona vacantia.

20. As rightly argued by Dr. Singhvi, appearing on behalf of the respondents, Section 2(4) refers to property vesting in the State and not to property which might vest in the State at a future point of time.

21. Section 4(1) of the Escheats Act provides:

> 4. Report by Tehsildar.:-(1) Upon receipt of information as to the existence within Tehsil of any property to which this Act applies, whether or not in the possession of any person, the Tehsildar shall-
>
> (a) Ascertain whether or not there is any person entitled to such property.
>
> (b) Prepare an inventory thereof showing the prescribed particular.
>
> (c) Take over possession of it in the prescribed manner, and
>
> (d) Make a report to the collector:
>
> Provided that if such property is in the present possession of any person, such possession shall not be disturbed.
>
> In my considered opinion, initiation of proceedings under the Escheats Act is subject to determination, at least prima facie, of the jurisdictional fact that the properties in question had acquired the character of "abandoned property".
>
> 21. The expression "escheat" or "bona vacantia" has not been defined in the Escheats Act. However, the Escheats Act having been enacted in terms of Article 296 of the Constitution, the expressions are to be understood in the sense in which they have

been used in Article 296 of the Constitution, set out hereinbelow for convenience:-

> "296. Property accruing by escheat or lapse or as bona vacantia Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union: Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State Explanation In the article, the expressions Ruler and Indian State have the same meanings as in Article 363"

22. Article 296 does not leave any discretion for determination of what might constitute escheat or bona vacantia. Article 296 makes it clear that the principles applicable in this regard, prior to commencement of the Constitution of India, would continue.

23. Law relating to bona vacantia provides for conservation of abandoned properties. The nature of the property to which the Escheats Act applies must necessarily be abandoned property in the sense that there should be no claimants to the property, as argued by Dr. Singhvi.

24. The question is, what exactly is "abandoned Property" or what property is "bona vacantia". In Bombay Dyeing Manufacturing Co. Ltd. vs. State of Bombay1, a Constitution Bench of this Court while deciding the challenge to the constitutional validity of the Bombay Labour Welfare Fund Act (40 of 1953), observed and held that the expression "abandoned property", or to use the more familiar term "bona vacantia", comprises properties of two different kinds, those which come in by escheat and those over which no one has a claim. The relevant paragraph of the judgment is extracted in the judgment of my esteemed sister.

25. Property is subject to the right of escheat, where upon intestacy, there is no heir. Escheat was a right, whereby land of which there was no longer any tenant, returned by reason of tenure, to the lord by whom, or by whose predecessors in title, the tenure was created.

26. In A-G of Ontario v Mercer2, Lord Selborne LC held "Escheat is a term of art and derived from the French word escheat that is cadere excidere or accidere and signifyeth property when by accident the lands fall to the lord of whom they are holden". Escheat was an incident of feudal tenure and was based on the want of tenant to perform the feudal services.

27. As per Paragraph 1437 of the fourth edition of Halsbury's Laws of England, (Vol 17) escheat propter defectum tenentis occurred in the case of intestate death, where the last owner of the land died intestate, 1 AIR 1958 SC 328 2 A-G of Ontario v Mercer (1883) 8 App Cas 767 at 772 without any heir. In this event, a person became possessed of lands as purchaser, and died intestate without

issue; the Lord or the Crown, as the case might be, re-entered in right of his or its former ownership, the estate which was granted, having come to an end.

28. As very rightly observed and held by my esteemed sister, the doctrine of escheats postulates that where an individual dies intestate and does not leave behind any heir, who is qualified to succeed to the property, the property devolves on the Government.

29. An abandoned property is a property for which no claim has been made for a substantially long period. The length of the period for which no claim is made, should be such as to raise the presumption that the property is abandoned.

30. In Bombay Dyeing Manufacturing Co. Ltd. (supra), this Court found that initiation of escheat proceedings on the ground of absence of claim for a period of three years was unconstitutional.

31. Dr. Singhvi submitted, and in my view, rightly, that if during an enquiry to ascertain whether property was abandoned or not, any claim was made, the proceedings had to be dropped.

32. If no claims are made or if the State arrives at the opinion that all claims to the property are mala fide, only then may it apply to the Court for final determination as to the nature of the property, and thereafter initiate escheat proceedings.

33. In the proceedings before the Court, the Court would necessarily have to arrive at a finding that the property had been abandoned and that there were no heirs who could come forward to claim the properties. To put it differently, there would have to be total and absolute failure of heirs.

34. As held by this Court in State of Punjab v. Balwant Singh & others (supra), quoted by my esteemed sister, the State Government does not take the property as a rival or preferential heir of the deceased, but as the lord paramount, when there is no heir qualified to succeed.

35. The proposition that escheat is a doctrine that recognises State as a paramount sovereign, in a clear case of failure of heirs, and that when a claim of escheat is put forward by the Government, the onus lies heavily on the Government to prove the absence of any heir anywhere in the world, finds support from the judgments of this Court in Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust vs. Collector, Haridwar & Ors.3 and State of Bihar vs. Radha Krishna Singh 7 Ors.4 referred to by my esteemed sister.

36. As noted by my esteemed sister, the Single Bench of Delhi High Court had dismissed Testamentary Case No. 26 of 1987 on 3.7.2012 3 (2017) 16 SCC 418 4 (1983) 3 SCC 118 holding that the executors of the will had not been able to prove the Will dated 30.10.1985 and the codicil dated 7.11.1985.

37. The judgment and order dated 3.7.2012 dismissing Testamentary Case no. 26/1987 is of no consequence. It is well settled that if a will fails, the property has to be treated as intestate, which devolves upon the natural heirs in accordance with the applicable laws of succession. As observed by

my esteemed sister, the dismissal of the probate case might mean that the Trust cannot lay claim to the properties. However, that does not make the properties escheated properties.

38. If, upon enquiry under Section 6 of the Escheats Act, the Collector finds that the property in question is not of the nature to which the Escheats Act applies, he is obliged to order the proceedings to be closed and the property to be allowed to remain with the person in whose possession it might then be, or if possession thereof has been taken under Section 4(c) or Section 6, the Collector is obliged to restore the property to the person from whom possession was so taken, as mandated by Section 6 (9)a) of the Escheats Act.

39. It is true that the respondent trustees filed the writ petition basing its claim on the Will. The locus standi of the writ petitioners was never in issue. By entertaining the writ petition the High Court, in effect, accepted that the respondent trustees of the Trust had locus standi to file the writ petition, and rightly so.

40. The writ petition filed by the Trustees having been entertained and kept pending, the High Court would not have been justified in dismissing it on the ground that the Trust had no right to lay claim in the properties in question, in view of dismissal of the probate case, more so, when the appeal filed by the Trustees is still pending. The High Court was right in not dismissing the writ petition.

41. The fact that the High Court had earlier, on the prayer of the Trustees, adjourned the writ petition sine die, to await the decision in the Probate application, did not debar the High Court from exercising its writ jurisdiction after disposal of the Probate case. At the cost of repetition, it is reiterated that even though the Probate case has gone against the trustees, the appeal was and is still pending before the Division Bench, as noted by my esteemed sister.

42. It is true that the Khetri Trust can claim a right over the property in terms of the will executed by Raja Bahadur, only if it succeeds in the appeal pending in Delhi High Court. This in my view, did not denude the trustees of the locus standi to pursue the writ petition challenging the initiation of proceedings under the Escheats Act.

43. As held by this Court in State of Bihar vs. Radha Krishna (supra), the onus to establish that a property is bona vacantia is on the Government. The burden of proof is heavy. This proposition also finds support from Kutchi Lal Rameshwar Ashram Trust (supra).

44. The threshold requirements laid down by this Court upon interpretation of Article 296 are the conditions precedent for initiation of proceedings under the Escheats Act. The authorities would have to be satisfied that the properties had been abandoned and that there were no known claimants of the said properties The purpose of the legislation is to conserve abandoned property and safeguard the property for the benefit of the rightful claimant who may come later.

45. Mr. Paras Kuhad, learned senior counsel appearing on behalf of some of the respondents adopted the arguments advanced by Dr. Singhvi and further submitted, and rightly, that before the Collector can apply to the Court for vesting or custody of the property in terms of the Section 6(7)

and 6(9) of the Escheats Act, the following tests should be satisfied.

"(i) The case should not involve complicated questions of law as to title or status which has not previously been adjudicated by a Civil Court of competent jurisdiction.

(ii) There should not be claimants to the property.

(iii) The property should be of the nature to which the Escheats Act applies i.e., bona vacantia and/or in other words abandoned property.

(iv) The last owner should have died intestate without leaving any known heirs. In other words there has to be a complete and absolute failure of heirs and thus any possibility of claim being made to the property by any person.

(v) A claim made pursuant to a proclamation issued under the Escheats Act should prima facie be not maintainable. If a claim is prima facie maintainable even though the claim may not have been established, no application for vesting or custody can be made.

(vi) Even if no claim is filed, the Collector should be satisfied that there is no person entitled to claim the property. In other words, there should be no person entitled to claim the property irrespective of whether there was any claim to the property and irrespective of whether the claim, if any, could be established.

(vii) The Collector is satisfied that it is a bona fide case of property vesting in the State as ultima heres under Section 296 of the Constitution of India by escheat or as bona vacantia. The vesting of the property in the State as ultima heirs by escheat or as bona vacantia must positively be established and not likely presumed."

46. Shri Raja Bahadur Singh being a Hindu by religion was governed by the Hindu Succession Act, 1956. The relevant provisions of the Hindu Succession Act are as follows:-

> "8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—
>
> (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
>
> (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
>
> (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
>
> (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule.—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:— Rule1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share. Rule2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally

12. Order of succession among agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent. Rule3.—Where neither heir is entitled to be preferred to the other under Rule 1or Rule 2 they take simultaneously.

xxx xxx xxx

13. Computation of degrees.—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be. (2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

xxx xxx xxx

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.

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30. Testamentary succession.—1*** Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so 2[disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925),or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumbaor kavaruin the property of the tarwad, tavazhi, illom, kutumbaor kavarushall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this."

47. The Expression "agnate" and "cognate" are defined in Section 3(a) and 3(c) respectively of the Hindu Succession Act to mean:-

> "3(a)"agnate" - one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males:
>
> 3(b) .....
>
> 3(c) "cognate" - one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males."

48. Under Section 29 of the Hindu Succession Act, the property of an interstate devolves on the Government, if the intestate has left no heir qualified to succeed to his or her property, in accordance with the provisions of the Hindu Succession Act. The Government is to take the property subject to all obligations and liabilities to which an heir would have been subject.

49. It is not necessary for this Court to consider the correctness of the judgment and order of the Delhi High Court in the probate proceedings, since the appeal therefrom is pending. However, no adverse inference could have been drawn by reason of withdrawal of the objections of the agnates and/or cognates of Raja Bahadur.

50. The inter se disputes, if any, between the agnates and/or cognates of Raja Bahadur and the legatees under his Will, are irrelevant for the purpose of escheat proceedings.

51. The provisions of Escheats Act regulate the procedure for initiation of the proceedings and making of enquiries in respect of properties to which the Escheats Act applies, that is, 'lawaris' properties vesting in the State qua ultima heres under Article 296 of the Constitution of India by escheat or bona vacantia, as rightly concluded by my esteemed sister.

52. The Escheats Act applies to properties vesting in the State. The Escheats Act is a complete Code which covers the power under Article 296 and provides for making of enquiries; custody and disposal and for vesting of properties in the State. However, the condition precedent for exercise of jurisdiction under the Escheats Act is subjective satisfaction that the property vests by reason of intestacy and complete failure of heirs.

53. The power under the Escheats Act can be exercised only after the Tehsildar ascertains whether or not there is any person entitled to the properties of the deceased. If the property is in possession of any person, such possession is not to be disturbed. In the instant case, it is the case of the respondents themselves that the properties of Raja Bahadur were in the possession of the Trust through the Manager, Nirbhay Singh.

54. The mere issuance of public notice by the Tehsildar, calling upon persons claiming interest or right in the properties of Raja Bahadur to appear in his office with documents, failing which it would be presumed that the Khetri house and other properties of Raja Bahadur were lawaris, does not absolve the Tehsildar of his obligation to enquire into whether there were any legal heirs.

55. There were claimants who objected to the grant of probate. Even though these objectors might have withdrawn their objections to the grant of probate, whatever be the reason, they did not resile from their claim to be heirs of Raja Bahadur under the Hindu Succession Act.

56. The withdrawal of an objection to grant of probate tantamounts to withdrawal of the grounds of objection to the Will and/or in other words, retracting the allegations of the Will being procured, forged, fabricated, fraudulent or created by exercise of undue influence.

57. The caveators who objected to grant of probate to the Will might very well have been advised not to proceed in view of the weakness of their case, or may be for other reasons That would not make any difference to their status as agnates or cognates of the deceased testator.

58. In fact, even the ultimate failure of the probate proceedings or in other words, dismissal of the appeal would not attract the provisions of the Escheats Act, unless there was a clear finding that Raja Bahadur left no agnates or cognates and there was complete failure of heirs. Once there were some heirs in the picture, it was not for the appellants to protect the properties of Raja Bahadur. It was for the rightful heirs to recover the properties from those in possession thereof.

59. The mere failure of an application for probate would not attract escheats. When a Will is not probated, the testamentary property is to be deemed to be intestate property and would devolve upon successor, if any, as per the general laws of succession. Unless there were complete failure of heirs, the Escheats Act would not be attracted.

60. It may be useful to refer to paragraph 597 of Volume 39 of the fourth edition of Halsbury's Laws of England extracted hereinbelow for convenience:-

> "597. Formerly, when a tenancy in fee simple came to an end for any reason, the land went back to the lord of whom the tenant, and he was said to take by escheat. The commonest instances were escheat for want of heirs (propter defectum sanguinis), which occurred when a tenant in fee simple died intestate without leaving an heir-at-law, and escheat on conviction of felony (propter delictum tenentis), but both these have been abolished. Escheat in other cases is still possible but rare. An example is where the land is disclaimed by the trustee in bankruptcy of the former owner, and another possible case is on the dissolution of a corporation not governed by the Companies Act 1948."

61. The condition precedent for initiation of proceedings under the Escheat Act is failure of heirs. In the absence of any finding of failure of heirs, proceedings could not have been initiated. Under Section 4, it is the duty of the Tehsildar to see that there is no one entitled to the property. The proviso clearly prohibits the taking over of property or disturbance of possession thereof, if the property is in the possession of any one.

62. Apart from the fact that the proceedings could not be initiated in the absence of satisfaction of complete failure of heirs to succeed to the properties, Section 6 (7) mandates that if any enquiry involves a complicated question of law as to title or status, which has not been previously adjudicated upon by a Civil Court of competent jurisdiction, and if there are two or more claimants in respect of the same property, the Collector may require any or all of the claimants to apply for a succession certificate in respect of such property or to institute a suit for declaration of title thereto, within such period not exceeding six months in the aggregate, as the Collector might fix.

63. Furthermore, if the Collector finds that the property is not of the nature to which the Act applies, the Collector is obliged to close the proceedings and allow the property to remain with the person in whose possession it might be or if possession thereof has been taken under Section 4 or Section 6, to be restored to the person from whom possession was so taken.

64. Significantly, in this case, the proceedings under the Escheats Act were initiated and the orders/communications impugned in the writ petition were issued, without any finding of complete failure of heirs. In the absence of formation of the opinion of failure of heirs, the proceedings initiated under the Escheats Act were wholly without jurisdiction.

65. In Calcutta Discount Company vs. ITO, Companies District I and Ors., reported in AIR 1961 SC 372, a Constitution Bench of this Court held that when exercise of jurisdiction depends upon formation of any particular opinion, then formation of that opinion is necessary before acquiring jurisdiction. In such a case, it is open to an aggrieved person to challenge formation of the opinion in a writ proceeding on such grounds as are available on this count.

66. In Union of India vs. Hindalco Industries, reported in (2003) 5 SCC 194, a show cause notice issued under the Central Excise Act on the ground of incorrect valuation without recording a satisfaction that the price was not the sale consideration or that the buyer was a related person, was held to be without jurisdiction as there was no valid foundation for ignoring the declared price.

67. It is reiterated at the cost of repition that the condition precedent for exercise of jurisdiction is the existence of the jurisdictional fact of the properties in question being bona vacantia, in the absence of any heirs. When existence of jurisdiction by an authority, depends upon existence of a particular fact, the determination of such a fact is preliminary to the exercise of jurisdiction. The existence of the fact has to be decided at the threshold.

68. Where the jurisdiction of an authority depends upon a preliminary finding of fact, the High Court is entitled, in an application under Article 226, to determine upon its own independent judgment, whether or not that finding is correct, as held by this Court in State of Madhya Pradesh & Ors. vs. Sardar D.K. Jadav reported in AIR 1968 SC 1186 and Ujjambai vs. State of U.P. reported in AIR 1962 SC 1621.

69. I am unable to persuade myself to agree with my esteemed sister that the issuance of notices informing those interested in the properties left by late Raja Bahadur, that if they did not appear and produce documents, it would be presumed that the properties were lawaris, satisfies the conditions precedent for initiation of proceedings under the Escheats Act.

70. The District Collector clearly erred in rejecting the claims of agnates on the ground that they had withdrawn their objections in the probate proceedings. Withdrawal of objections to the probate proceedings does not estop the agnates and/or cognates from claiming the property upon failure of the probate application.

71. As observed by my esteemed sister, under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.

72. The power of the High Court to issue prerogative writs is wide. The Constitution does not place any limitation on such power. However, the Courts have, through judicial pronouncements, evolved self imposed restrictions on the exercise of power by the writ Court. When an efficacious alternative remedy is available, the High Court does not normally exercise jurisdiction. However, when a writ petition has been entertained and kept pending for years, it would not be appropriate to reject the writ petition only on the ground of existence of an alternative remedy.

73. It would also be relevant to note that the remedy of appeal availed by the Trustees was against the order of the Collector passed in 2016 almost two decades after the writ petition had been filed. The supervening circumstance of the order of the Collector and the appeal therefrom, would not in my view, justify the dismissal of the writ petition on the ground of existence of alternative remedy.

74. As noted by my esteemed sister, the writ petition filed in 1987 had been pending in the High Court for about three decades. Once the writ petition had been entertained and kept pending, it should not be rejected on the ground of existence of alternative remedy of appeal before the Board of Revenue.

75. In deciding the question of maintainability of a writ petition in view of existence of alternative remedy, this Court cannot forget that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature. The High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The existence or even invocation of alternative remedy has nothing to do with the jurisdiction of the writ court. Even if a party has already availed of the alternative remedy by invoking the appellate jurisdiction, as also the jurisdiction under Article 226, the party could elect to prosecute proceedings under Article 226 for the same relief.

76. There are certain well-recognised exceptions where the bar of alternative remedy does not apply. Where the authority has acted without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of an alternative remedy, as held by this Court, inter alia, in Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur, U.P. & Ors. reported in (1987) 4 SCC 525. Complete lack of jurisdiction of an authority to take the impugned action, as in this case, is always a good ground to entertain a writ petition.

77. Moreover, as held by this Court in Municipal Council, Khurai and Anr. vs. Kamal Kumar & Anr. reported in AIR 1965 SC 1321, M.G. Abrol, Addl. Collector of Customs, Bombay & Anr. vs. Shantilal Chhotelal & Co. reported in AIR 1966 SC 197 and in State of U.P and Others vs. Indian Hume Pipe Co. Ltd reported in (1977) 2 SCC 724, there is no rule of law that the High Court should not entertain a writ petition when an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case has entertained the writ petition and decided the question of law arising in it and in my opinion rightly. In my view, we would not be justified in interfering in our jurisdiction under Article 136 of the Constitution to quash the order of the High Court, merely on the ground of existence of an alternative remedy. As held by this Court, inter alia, in Kanak vs. U.P. Avas Evam Vikas Parishad & Ors. reported in (2003) 7 SCC 693 (701), once a writ petition is entertained, and the matter is argued at length on merit, it would be too late in the day to contend that the writ petitioner should avail the alternative remedy.

78. The High Court has, in my view, rightly allowed the writ petition. This appeal is, in my view, liable to be dismissed.

....., J (INDIRA BANERJEE) AUGUST 28, 2019 NEW DELHI REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.6677 OF 2019 (@ SPECIAL LEAVE PETITION (CIVIL) NO. 36771 OF 2016) STATE OF RAJASTHAN AND ORS. ...APPELLANT(S) VERSUS LORD NOTHBOOK AND ORS. ...RESPONDENT(S) O R D E R In view of difference of opinions and the distinguishing judgments (Hon'ble R. Banumathi, J.

allowed the appeal and Hon'ble Indira Banerjee, J. dismissed the appeal), the matter be placed before Hon'ble the Chief Justice of India for referring the matter to the Larger Bench.

.....J.
[R. BANUMATHI]

NEW DELHI
28TH AUGUST, 2019

.....J.
[INDIRA BANERJEE]