R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION No.53075 OF 2015 (GM-RES)
C/W

WRIT PETITION No.35524 OF 2018 (GM-RES)

WRIT PETITION No.3221 OF 2022 (GM-RES)

IN WRIT PETITION NO. 53075/2015

BETWEEN:

CHADURANGA KANTHARAJ URS
S/O LATE K B RAMACHANDRARAJ URS
AGED ABOUT 42 YEARS
R/AT LEELA VIHAR
22/1 GOKULAM ROAD
JAYALAKSHMIPURAM
MYSORE-570 012.

ALSO AT
GAYATRI VIHAR
BANGALORE PALACE GROUND
RAMANA MAHARSHI ROAD
BANGALORE-560 080.

...PETITIONER

(BY SRI. S. SRIRANGA SENIOR, ADVOCATE FOR
SMT. SUMANA NAGANAND, ADVOCATE
SRI. ANEESH KRISHNA, ADVOCATE
SRI. KRISHNA S, ADVOCATES)

AND:

1 . UNION OF INDIA
MINISTRY OF LAW AND JUSTICE
4TH FLOOR, "A" WING
SHASTRI BHAVAN
NEW DELHI-110 001
REPRESENTED BY ITS SECRETARY.

2 . SMT. PRAMODA DEVI
W/O LATE SRIKANTADATTANARASIMHARAJA WADIYAR
AGED ABOUT 62 YEARS
R/AT THE MYSORE PALACE
MYSORE-570 001.

3. SMT. INDRAKSHI DEVI
W/O SRI.R. RAJA CHANDRA
D/O LATE HIS HIGHNESS
SRI. JAYA CHAMARAJA WADIYAR
AGED ABOUT 69 YEARS
R/AT NO.241, 15TH MAIN ROAD
RMV EXTENSION
SADASHIVANAGAR,
BENGALURU - 560 080.

4. SMT. DEEPA MALINI DEVI
D/O LATE K.B. RAMACHANDRARAJ URS
AGED ABOUT 58 YEARS
R/AT NO.304, BRIGADE PARKWAY
2ND MAIN ROAD, V.V. MOHALLA
MYSURU - 570 002.

...RESPONDENTS

(BY SRI. M.N. KUMAR, CGC FOR R1;
SRI. JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR
SRI. S. RAJENDRA, ADVOCATE FOR R2;
SRI. PAMOD NAIR SENIOR ADVOCATE FOR
SRI. ARAVIND REDDY H, ADVOCATE FOR R4;
SRI. SUHRITH PARTHASARTHY, ADVOCATE FOR
SRI. ANISH ACHARYA, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT SECTION 5[ii] OF THE HINDU SUCCESSION ACT IS OTIOSE, REPUGNANT AND UNCONSTITUTIONAL AS

ALSO INVALID; DIRECT THE UNION OF INDIA TO DELETE SECTION 5[ii] OF THE STATUE BOOK.

IN WRIT PETITION NO.35524 OF 2018

BETWEEN:

1 . VENKATRAO Y. GHORPADE
S/O.H.H.LATE SHRI.YESHWANTRAO GHORPADE,
AGED ABOUT 67 YEARS,
R/AT.SAMPOORNA,
1ST FLOOR, FLAT NO.13,
7TH PALACE CROSS ROAD,
BANGALORE-560 020.
KARNATAKA.

2 . GAYATRI GHORPADE
D/O.VENKAT RAO Y GHORPADE,
AGED ABOUT 29 YEARS,
R/AT SAMPOORNA 1ST FLOOR,
FLAT NO.13,
7TH PALACE CROSS ROAD,
BANGALORE-560 020.

...PETITIONERS

(BY SRI. GOVINDARAJU L., ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF LAW & JUSTICE,
4TH FLOOR, "A" WING,
SHASTRI BHAVAN,
NEW DELHI-110001.
REPRESENTED BY ITS SECRETARY.

2 . SHIVA VILAS TRUST
NO.97, PALACE ROAD,
SANDUR-583119,
REPRESENTED BY ITS SECRETARY,
NAZIM SHEIKH.

...RESPONDENTS

(BY SRI. M.N. KUMAR CGC FOR R1;
SRI. VIVEK HOLLA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT SECTION 5(ii) OF THE HINDU SUCCESSION ACT IS OTIOSE, REPUGNANT AND UNCONSTITUTIONAL AS ALSO INVALID; SUCH OTHER DIRECTIONS INCLUDING A DIRECTION TO THE UNIOR OF INDIA TO DELETE SECTION 5(ii) OF THE STATUTE BOOK.

IN WRIT PETITION NO.3221 OF 2022

BETWEEN:

CHADURANGA KANTHARAJ URS
S/O LATE K B RAMACHANDRARAJ URS
AGED ABOUT 48 YEARS
R/AT "LEELA VIHAR"
22/1, GOKULAM ROAD,
JAYALAKSHMIPURAM
MYSURU - 570 012

ALSO AT
GAYATRI VIHAR
BANGALORE PALACE GROUND
RAMANA MAHARSHI ROAD
BANGALORE - 560 080.

...PETITIONER

(BY SRI. S. SRIRANGA SENIOR, ADVOCATE FOR
SMT. SUMANA NAGANAND, ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF LAW AND JUSTICE
4^{TH} FLOOR, "A" WING
SHASTRI BHAVAN
NEW DELHI - 110 001
REPRESENTED BY ITS SECRETARY.

2 . TRIPURASUNDARI DEVI
W/O SWAROOP ANAND
AGED ABOUT 56 YEARS
R/AT KALPANA, NO.5,
DIWANS ROAD,

LAKSHMI PURAM MYSORE - 570 004

ALSO AT
NO. 17, PRESTIGE DORCHESTER
BEHIND JAKKUR FLYING CLUB
JAKKUR, BANGALORE - 560 065.

...RESPONDENTS

(BY SRI. M.N. KUMAR, CGC FOR R1;
R2 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT SECTION 5(ii) OF THE HINDU SUCCESSION ACT IS OTIOSE REPUGNANT AND UNCONSTITUTIONAL AS ALSO INVALID SUCH OTHER WRITS, DIRECTIONS, ORDERS INCLUDING THE DIRECTION TO THE UNION OF INDIA TO DELETE SECTION 5(ii) OF THE STATUE BOOK.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 18.06.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.G.S. KAMAL

CAV ORDER

1. In these writ petitions following common reliefs are sought:

"a) A writ in the nature of Certiorari or any other appropriate writ, direction or order to declare that Section 5(ii) of the Hindu Succession Act is otiose, repugnant and unconstitutional as also invalid.

b) Such other writs, directions, orders including a direction to the Union of India to delete Section 5(ii) of the statue book.

c) Such other writs, directions, orders having regard to facts and circumstance of the case including the award of costs".

2. **<u>Brief facts in W.P.Nos.53075/2015 and 3221/2022:</u>**

(a) Sri. Jayachamarajendra Wadiyar, was the last *Ruler* of the Princely State of Mysore. He had five daughters and a son. Said Sri. Jayachamarajendra Wadiyar passed away on 23.09.1974. Upon his demise, his son Sri. Srikantadatta Narasimharaja Wadiyar symbolically ascended to the throne. Smt.Gayathri Devi one of the daughters of Sri.Jayachamarajendra Wadiyar predeceased him on 30.06.1974. Petitioner in W.P.No.53075/2015,and W.P.No.3221/2022 namely Sri.Chaduranga Kanthraj Urs claims to be the son of said Smt.Gayathri Devi.

(b). That Sri. Srikantadatta Narasimharaja Wadiyar, uncle of the petitioner had groomed the petitioner to take over the reigns of the Mysore Palace and had confided him that he would make an equitable and fair partition of all the assets of Late Maharaja equally amongst all his sisters including children of his deceased sister. However, his uncle also died issueless on 10.12.2013 leaving behind his wife Pramoda Devi-respondent No.2 as his sole heir.

(c) That the petitioner being the eldest male member of the royal family was called upon to perform the last rites of his uncle-Sri. Srikantadatta Narasimharaja Wadiyar. Upon his demise, his widow, the respondent No.2 took charge of the affairs of the palace. Initially, there was great cordiality between her and the petitioner, which had later turned hostile. She refused to appoint petitioner as the 'Uttaradhikari' of the palace.

(d). In the circumstances, petitioner was constrained to file a suit in O.S.No.25185/2015 on the file of City Civil Judge, Bengaluru seeking partition of joint family properties.

(e) That in the said suit an application under Order VII Rule 11(d) of CPC came to be filed by the respondent No.2 contending that provisions of the Hindu Succession Act, 1956 (for brevity 'Act, 1956') was not applicable in view of provisions contained in Section 5(ii) of the Act, 1956. It is under these circumstances, writ petition in W.P.No.53075/2015 is filed.

(f) Writ petition in W.P.No.3221/2022 is filed by the very same petitioner-Sri. Chaduranga Kanthraj Urs, in view of another application under Order VII Rule 11 of CPC being filed by respondent-Tripurasundaridevi, defendant No.6 in the said suit.

3. **<u>Brief facts in W.P.No.35524/2018:</u>**

(a) Writ petition in W.P.No.35524/2018 is filed by Sri. Venkatrao Y. Ghorpade as petitioner No.1 and Gayatri Ghorpade as petitioner No.2 contending that they are son and daughter respectively of Sri.Yeshwantrao Ghorpade the erstwhile Maharaja of Sandur. That Sri. Yeshwantrao Ghorpade had executed a Will dated 09.12.1972 in terms of which, he had created life interest in favour of his wife Smt. Sushila Devi while stipulating that the entire estate would devolve on his eldest son Sri. M. Y. Ghorpade. Sri.Yeshwantrao Ghorpade died on 11.10.1996 leaving behind his wife Smt.Sushila Devi, petitioner Nos.1 and 2 and other children. Beneficiaries of the Will, namely Smt.Sushila Devi and Sri.M.Y.Ghorpade, the wife and eldest son of Sri.Yeshwantrao Ghorpade in turn had created a trust in the year 1999 in the name and style of 'Shiva Vilas Trust'-respondent No.2. That the object of the respondent No.2-Trust was to transfer all the estate of Sri.Baharji Ghorpade, the great grandson of Sri.Yeshwantrao Ghorpade, from his eldest son, Sri.M.Y.Ghorpade.

(b) Smt.Sushila Devi Ghorpade, the wife of Sri.Yeshwantrao Ghorpade allegedly executed a Will dated 11.05.2010, in terms of which she bequeathed her 1/7th share to all legal heirs in equal proportion and she died on 01.04.2011. A petition seeking probate of the said Will was filed before this Court by the executor of the Will which is pending adjudication.

(c) Upon the demise of Sri.M.Y.Ghorpade, petitioner No.1 and other legal heirs had approached his wife Smt.Vasundhara Raje Ghorpade, whose family is the beneficiary under the Will executed by Sri.Yeshwantrao Ghorpade and proposed a fair and equitable distribution of assets of the family. However, she passed away on 31.05.2017.

(d) In the circumstances, petitioners were constrained to file a suit in O.S.No.25958/2017 before the Civil Court, Bengaluru seeking partition of joint family properties among all the heirs of late Maharaja Sri. Yeshwantrao Ghorpade.

(e) Respondent No.2 namely 'Shiva Vilas Trust' has filed an application under Order VII Rule 11 of CPC contending that the provisions of the Act, 1956 had no application to the estate of Late Maharaja, in the light of Section 5(ii) of Act, 1956.

(f) It is under these circumstances, present petition is filed.

4. **Common grounds urged in the aforesaid Writ Petitions:**

(a) That the Act, 1956, came into force from 17.06.1956. Section 4 of the Act, 1956 provides for an overriding effect on any text, rule or interpretation of Hindu law or any custom and usage and anything inconsistent with the Act, 1956. An exception is carved out under Section 5 of the Act, 1956 to the effect that the general provisions of succession would not apply to any estate descending on a single heir in consequence of any covenant or agreement entered into by the *Ruler*s of any Indian State with the Government of India. Said provision, providing exception to the general enactment, was under extraordinary circumstances. Such exceptions were provided to facilitate integration of princely states with the Union of India.

(b) This is evident from the agreements dated 23.01.1950, which were entered into between the Governor General of India and Maharaja of Mysore produced at Annexure-D in W.P.Nos.53075/2015 and 3221/2022 and agreement dated 01.04.1949 entered into between Governor General of India and Sri. Yeshwantrao Ghorpade produced at Annexure-F in W.P.No.35524/2018.

(c) The *Ruler*s who had entered into such agreements were granted certain privileges along with Privy Purse. This guarantee and assurance given to the princely states were incorporated in the Constitution of India in terms of Articles 291 and 362.

(d) Subsequently, by Presidential order, Union of India withdrew the said guarantees and assurances in exercise of its power under clause (22) of Article 366. This action on the part of the Union of India was declared to be unconstitutional by the Apex Court in the case of ***H.H MAHARAJADHIRAJA MADHAV RAO JIVAJI RAO SCINDIA BAHADUR OF GWALIOR AND OTHERS Vs UNION OF INDIA AND ANOTHER*** reported in **(1971) 1 SCC 85** Consequent thereupon, 26th amendment to the

Constitution was introduced in the year 1971. Resultantly Articles 291 and 362 were deleted and a new Article 363-A was introduced, whereby all guarantees given to the *Ruler*s were withdrawn and they were ceased to enjoy various benefits and privileges which were earlier conferred. That the said 26th Constitutional amendment was challenged before the Apex Court in the case of ***RAGHUNATH RAO Vs UNION OF INDIA*** reported in ***1994 Supp (1) 191*** which resulted in its dismissal.

(e) Thus, the erstwhile *Ruler*s or their successors were no longer entitled to any privileges or benefits and they formed common citizenry of the country.

(f) In the light of aforesaid position of law, continued incorporation of Section 5(ii) of the Act, 1956 is untenable and anachronistic rendering itself to abuse and mischief. As such, the aforesaid petitions are filed seeking reliefs as noted above.

Objections to the Writ Petitions:

5. Respondent No.1-Union of India has filed its statement of objections contending *inter-alia;*

(a) that Section 4 of the Act, 1956, intends to override any text, rule or interpretation of Hindu law or any custom or usage with respect to any matter for which provision is made in the Act, 1956. Section 5 carves out three factual situations that would make the Act, 1956 inapplicable to the cases arising under the such facts. That the Section 5(ii) of the Act, 1956 deals with the cases where the estate of the deceased descends to a single heir and such act of descend arises out of terms of any covenant or agreement entered into by the *Ruler* of any Indian State with the Government of India before the commencement of the Act, 1956.

(b) Section 5(ii) of the Act, 1956 deals with what is known in Hindu law as impartible estate. Impartible estate is one where it devolves on a single member of a family to the exclusion of other members.

(c) That a clear reading of the Act, 1956 discloses that it applies to deal with the properties of a Hindu dying intestate. Section 5(ii) of the Act, 1956 has to be understood in the context of the scheme of the Act, 1956. Section 5 makes the Act inapplicable to certain kind of properties alone. It is therefore evident that the bar under Section 5(ii) of the Act, 1956 will not arise unless the properties dealt with in any factual scenario belong to an Indian *Ruler* in his private capacity. In other words, the Act does not intend to exclude a Hindu, but excludes certain properties that may be in the hands of a Hindu dying intestate.

(d) That the agreement entered into between Government of India and the *Ruler*s of the subject matter of the writ petitions deals with financial compensation to be given thereunder.

(e) Article II and Article 3 of the agreements makes it clear that the *Ruler* shall be entitled to full ownership, use and enjoyment of the private properties as distinct from the state properties belonging to them on the date of the agreement. Hence, the question of challenging the constitutional validity would not arise.

(f) Article 291 deals with Privy Purse. Where under, any covenant or agreement entered into between the *Ruler* and the Government of India, where the Government had guaranteed payment of any sum free of tax, it shall constitute a charge on the consolidated fund. Article 362 protects the *Ruler* by prohibiting the Parliament or Legislature from tinkering with such guarantee by enacting any law.

(g) That by introduction of Article 363-A, the recognition given to the *Ruler*, benefit of Privy Purse and privilege cease to exist. Section 5(ii) of the Act, 1956 does not deal with any of the matters dealt with under Articles 291, 362 or 363-A. As such, 26^{th} amendment to the Constitution does not have any impact on Section 5(ii) of the Act, 1956.

Contending as above, sought for dismissal of the Writ Petitions.

6. Shiva Vilas Trust-respondent No.2 in Writ Petition No.35524/2018, filed statement of objections, contending *inter-alia;*

(a) that averments in the writ petition regarding existence of Section 5(ii) of the Act, 1956 in the statute being redundant and anachronistic, in the light of decision of the Hon'ble Apex Court in the case of ***RAGHUNATH RAO GANAPATH RAO*** *supra* upholding the constitutional validity of 26th amendment to the Constitution of India, are misconceived. That the Apex Court in the said case only dealt with the question of whether 26th amendment affected the basic structure of the Constitution and it did not delve upon the question regarding devolution of impartible estate, from a former *Ruler*.

(b) That reading of Article 363-A makes it clear, it only seeks to end the recognition of position of a *Ruler*ship which was given under Article 362 and grant of Privy Purse under Article 291. That the 26th amendment by no means speaks about the estate that has devolved onto the heir of former *Ruler*. It does not strip the former *Ruler* in keeping the property as his own private or personal property.

(c) That the 26th Amendment can be distinguished from Section 5(ii) of the Act, 1956 in that Section 5(ii) of the Act, 1956 seeks to protect such property that had been held by a former *Ruler* as his own and which he has chosen to bequeath to his eldest son. There is no special privilege that are envisaged under Section 5 of the Act, 1956.

(d) Though, Articles 291 and 362 have been repealed by 26th amendment by way of insertion of Article 363-A, it does not deal with estate that is protected by a covenant entered into by a person who at the time of signing the covenant was recognized as a *Ruler*. Section 5(ii) of the Act, 1956 exists to protect the character of estate that is covered by the covenant for the *Ruler* to retain what already belonged to him as his personal properties.

(e) That the law made by the Parliament can be struck down by Constitutional Court only on two grounds, namely; (i) Lack of legislative competence and (ii) Violation of any fundamental rights or any other constitutional provisions.

(f) As such, the contention of the petitioners that the Section 5(ii) of the Act, 1956 is an affront to the Constitution and is incongruous with introduction of Article 363-A by 26th amendment, is unsubstantiated and misplaced. Provisions of Section 5(ii) of the Act, 1956 are not contradictory to the Amendment Act and cannot be held to be unconstitutional.

Contending as above sought for dismissal of the Writ Petitions.

<u>Submissions of learned counsel for the parties</u>:

7. Sri. Sriranga, learned Senior Counsel and Sri. Ajay Govindraj learned Counsel for the petitioners in these writ petitions reiterating the averments and the grounds urged in the writ petitions contended;

(a) that the effect of 26th amendment to the Constitution of India resulting in deletion of Articles 291 and 362 and insertion of Article 363-A was that the former *Ruler*s and their successors who were given privileges in terms of Articles 291 and 362 have now been treated as part of Indian Citizenry subject to ordinary Civil and Municipal law of the country.

(b) The 26th amendment to the Constitution has been upheld by the Apex Court. In that view of the matter, Section 5(ii) of the Act, 1956 which provided certain guarantees and assurance also has become redundant. Since provisions of Section 5(ii) of the Act, 1956 was introduced in the year 1956 in furtherance to the guarantees provided under Articles 291 and 362 during the transitory period, and the said Articles now having been deleted from the Constitution, retention of Section 5(ii) of the Act, 1956 serves no purpose. Instead has created hardship and hurdles to the persons like petitioners who are otherwise entitled for share in the joint family properties left behind by the erstwhile *Ruler*s and their descendants.

(c) That the aforesaid provision which was initially valid has become discriminatory with passage of time and it has lost its nexus with object sought to be achieved.

(d) That taking undue advantage of the existence of the said provision, applications as that of the one in these cases have been filed under Order VII Rule 11(d) of CPC seeking rejection of the plaints subjecting the petitioners to undergo unwarranted hardship.

(e) That when the Constitution itself was amended, resulting in deletion of Articles 291 and 362 and insertion of 363-A, there cannot be any discrimination even in the matter of succession to a Hindu joint family property and Section 5(ii) of the Act, 1956 has become hindrance in achievement of this aspect. Therefore, it is insisted that provisions of Section 5(ii) of the Act, 1956 shall not be allowed to remain in the statute book.

(f) That by passage of time it has lost its rationale of classification based on which it was enacted and has thus become arbitrary and unreasonable. It has failed to pass the classification test under Article 14 of the Constitution of India.

(g) In support of their contentions, learned Counsels have relied upon the following judgments:

(i) H.H Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and others v. Union of India and another reported in 1971 (1) SCC 85.

(ii) Raghunath Rao Vs. Union of India reported in 1994 Supp (1) SCC 191

(iii) Shanta Devi Pratapsingh Gaekwad and Another Vs. Shrimant Sangram Singh Pratap Singh reported in 1995 SCC Online GUJ 138.

(iv) D.S. Nakara and Ors. Vs. Union of India reported in 1983 1 SCC 305.

(v) Talat Fathima Hasan v. Syed Murtaza Ali reported in (2020) 15 SCC 655.

(vi) Maharani Deepinder Kaur (since deceased) through Legal Representatives and Others v. Rajkumari Amrit Kaur and Others, reported in (2022) 9 SCC 658.

(vii) Tikka Shatrujit Singh and others Vs. Sukjith Singh and another reported in 2026 SCC Online SC 971.

(viii) Maharaj Shri Manvendrasinhji Ranjitsinhji Jadeja Vs. Rajmata Vijaykunverba reported in 1988 SCC online GUJ 281.

(ix) Motor General Traders and Another Vs. State of Andhra Pradesh and others reported in (1984) 1 SCC 222.

(x) Satyawati Sharma Vs. Union of India, reported in (2008) 5 SCC 287.

(xi) State of West Bengal Vs. Anwar Ali Sarkar reported in (1952) 1 SCC 1.

(xii) Shri. Ram Krishna Dalmia v. S.R.Tendoulkar and others reported in 1958 SCC Online SC 6

8. Sri. Jayakumar S. Patil, learned Senior Counsel appearing for the contesting respondent No.2 referring to Article 253 of the Constitution of India, submitted;

(a) that the agreements or covenants that were entered into between the Dominion of India and the erstwhile *Ruler*s of the Princely States were in the capacity of two sovereign nations and the terms of said agreements are required to be given the status as contemplated under Article 253 of the Constitution of India.

(b) That deletion of Articles 291 and 362 of the Constitution of India by way of 26th amendment has no bearing of any nature whatsoever with regard to the agreements and covenants that have been entered into between two sovereign states by virtue of Article 253.

(c) That Articles 291 and 362 pertains only to grant of Privy Purse, certain privileges and guarantees and they do not deal with other aspects of the matter including right to private properties.

(d) That Article 363-A was introduced withdrawing the recognition which was granted only to the extent of privileges and guarantees, which contained under Articles 291 and 362. What is abolished is only said Privy Purse and the special privileges and nothing else. He referred to provisions of Indian

Independence Act, 1947 and also refers to paragraph Nos.100, 101, 102, 309, 115, 125, 126, 129, 143, 161 and 162 of the judgment of the Apex Court in the case of ***H.H MAHARAJADHIRAJA MADHAV RAO JIVAJI RAO SCINDIA BAHADUR OF GWALIOR*** *supra,* in support of his submissions.

(e) Adverting to the grounds of challenge to the constitutionality of a statute, learned Senior Counsel relying upon paragraph Nos.41, 42 and 43 of the judgment of the Apex Court in the case of ***STATE OF ANDHRA PRADESH AND OTHERS Vs McDOWELL AND CO., AND OTHERS*** reported in ***(1996)3 SCC 709*** as well as paragraph Nos.62, 63, 64 and 65 of the judgment of the Apex Court in the case of ***RAJBALA AND OTHERS Vs STATE OF HARYANA AND OTHERS*** reported in ***(2016) 2 SCC 445*** contended that the grounds of challenge to the constitutional validity of a statute can only be on the basis of legislative competence and violation of fundamental rights, if any and that the petitioners have not made out any case on these grounds, warranting grant of relief as sought for in these writ petition. Hence, sought for dismissal of the writ petition.

9. Sri. Pramod Nair, learned Senior Counsel appearing for respondent No.4 in W.P.No.53075/2015 submitted;

(a) that the constitutionality of Section 5(ii) of the Act, 1956 need not be gone into in the light of judgment of the Apex Court in the case of ***TIKKA SHATRUJIT SINGH AND OTHERS Vs SUKJITH SINGH AND ANOTHER*** reported in ***2026 SCC ONLINE SC 971.***

(b) Referring to paragraphs 53, 54, 57, 60-64, 74, 77 and 94 he submitted that the Apex Court has read down the provisions of Section 5(ii) of the Act, 1956 and has clarified its applicability. Therefore there is no requirement to consider constitutional validity or otherwise of the said provision.

10. Sri. M.N. Kumar, learned Central Government Senior Panel Counsel appearing for respondent No.1-Union of India, referring to paragraph Nos.13 and 14 of the Statement of Objections submits;

(a) That Section 5(ii) the Act, 1956 is applicable only depending upon the terms of any covenant or agreement that had been entered into between the erstwhile *Ruler*s of Princely State of India and the Union of India.

(b) That in the light of specific Articles of the Agreements, the application of provisions of Section 5(ii) of the Act, 1956 would be made applicable only in respect of *Gaddi* and not to the private properties, which are not covered under terms of the agreement.

(c) He refers to paragraph Nos.78 and 79 of ***TIKKA SHATRUJIT SINGH*** *supra* in support of his submission.

11. Sri. Vivek Holla, learned Counsel appearing for respondent No.2-Shiva Vilas Trust, in W.P.No.35524/2018, supporting and supplementing the submissions made by the learned counsels' appearing for the respondents, submitted;

(a) that the petitioners in order to succeed in the petition at the outset are required to show, how they are affected by the provisions of Section 5(ii) of the Act, 1956. The said Section is inapplicable to the facts and circumstances of the case. That the challenge to the constitutionality cannot be in vacuum and unless petitioners specifically make out a case of existence of such a provision in the statute directly affecting their interest, relief as sought for cannot be granted.

(b) He referred to paragraph Nos.19 to 21 of the Judgment of the Apex Court in the case of ***KUSUM INGOTS AND ALLOYS Ltd., Vs. UNION OF INDIA AND ANOTHER*** reported in ***(2004) 6 SCC 254.***

12. Heard and perused the records.

13. The points that arise for consideration are;

> *(1) Whether deletion of Articles 291 and 362 with the insertion of Article 363-A of the Constitution of India has rendered provisions of Section 5(ii) of the Act, 1956 otiose and redundant?*
>
> *(2) Whether with the passage of time provisions of Section 5(ii) of the Act, 1956 has become arbitrary, discriminatory, irrational and therefore unconstitutional?*
>
> *(3) Whether a direction is required to be issued to the respondent-Union of India to delete Section 5(ii) of the Act, 1956 from the statute as sought for by the petitioners?*

Discussions and analysis:

14. Petitioners have sought the reliefs as noted above essentially on the following grounds:

(a) That Section 5(ii) of the Act, 1956 which was initially valid has now, in the light of deletion of Articles 291 and 362 and insertion of Article 363-A of the Constitution by the Constitution (Twenty-Sixth amendment) Act, 1971, lost its nexus with the object sought to be achieved thereby has become redundant and discriminatory;

(b) That by passage of time it has lost its rationale of classification based on which it was enacted and has thus become arbitrary and unreasonable.

<u>Factual background; object of Articles 291 and 362 and effect of their deletion by the 26th Constitutional Amendment:</u>

15. Before adverting to the points raised, it is appropriate to encapsulate the factual background of the aforesaid provisions.

16. On 18.07.1947, Indian Independence Act, 1947 (for brevity 'the Act, 1947') was promulgated. Preamble of the said Act, reads as under;

''An Act to make provision for setting up in India of two independent dominions to substitute other provisions for certain provisions of the Government of India Act, 1935, which applies outside those dominions and to provide for other matters consequential on or connected with setting up of those dominions.''

17. Section 1 of the Act, 1947 declared that as from Fifteenth Day of August, Nineteen Hundred and Forty Seven, two independent dominions to be known respectively as India and Pakistan shall be set-up.

18. Section 7 of the Act, 1947 provided for the consequences of setting up of new dominions, which read as under:

"7. Consequences of the setting up of the new Dominions

(I) As from the appointed day-

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the Rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and

(c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercise-able at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise;

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as therein referred to which relate to customs, transit and is communications, -posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words " Indiae Imperator " and the words " Emperor of India " and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.''

19. Thus, on and after coming into force of the Act, 1947, the paramountcy of British lapsed and two independent dominions namely India and Pakistan came into existence. Besides, 562 Indian States became completely

sovereign and independent. Indian States were free to accede either to Dominion of India or of Pakistan or to remain independent. Those *Ruler*s of Indian States who opted to accede to the Dominion of India entered into Instruments of Mergers which were accepted by the Governor General of India and the Indian States thus becoming part of Dominion of India. The said instruments broadly provided for matters specified in the schedule thereto with regard to dominion legislature to make laws for the state. The said instruments also provided that the erstwhile *Ruler*s of Indian states were entitled to receive annually from the revenue of the state an allowance called ''*Privy Purse*'' as specified in the said agreements, which amount was to be free of taxes. The said instruments also reserved personal rights, privileges and dignities of the *Ruler*s of Indian States.

20. Constituent assembly, which was entrusted with the task of framing constitution had guaranteed the provisions contained in the said merger instruments including the provisions relating to Privy Purse and personal privileges and dignities. In furtherance to this guarantee contained in the instruments of merger, the Constituent Assembly

of India adopted two articles namely Articles 291 and Article 362.

21. Article 291 dealt with matter pertaining to payment of Privy Purse while Article 362 dealt with guarantees and assurances of personal rights and privileges of the *Ruler*s of Indian States. Clause (22) of Article 366 provided recognition of the *Ruler*s for the purpose of enjoyment of Privy Purse, privileges, titles and dignities, which was agreed to and assured in terms of merger instruments. Said Articles 291, 362 and clause (22) of 366, read as under;

> ***"291.*** **Privy Purse *sums of Rulers.*** *— (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as* Privy Purse —
>
> *(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and*
>
> *(b) the sums so paid to any Ruler shall be exempt from all taxes on income.*
>
> *(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may subject to any agreement entered into in that behalf under clause (1) of Article 278, be determined by order of the President.*
>
> ***362. Rights and privileges of Rulers of Indian States.*** *— In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or*

agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

Clause (22) of Article 366

'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler.

22. The aforesaid assurance and guarantee contained in Articles 291 and 362 was subsequently sought to be withdrawn by a Presidential order, which was challenged in the case of ***H.H MAHARAJADHIRAJA MADHAV RAO*** *supra*. The Eleven-Judges Bench of the Apex Court held that the Presidential order withdrawing the guarantees and assurance provided under Articles 291 and 362 to be unconstitutional, illegal and *ultra vires*.

23. Consequent thereupon, Constitution (Twenty-Sixth Amendment) Act, 1971 was brought in, in terms of which, guarantees and assurances given to the erstwhile *Ruler*s of Indian States for the payment of Privy Purse, personal rights, privileges and dignities as contemplated under Articles 291 and 362 were withdrawn by deleting the said two Articles and by inserting Article 363-A and substituting clause (22) of Article 366. This 26th

amendment to the Constitution was again challenged in the case of ***RAGHUNATH RAO*** *supra*, the Constitution Bench of the Apex Court upheld the constitutionality of the 26th amendment by declaring that it did not violate the basic structure of the Constitution and hence it was valid. It also found that removal of Articles 291 and 362 had not made any change in the personality of the constitution either in its scheme or in its basic feature or in its basic form or in its character.

24. Article 363-A and substituted clause (22) of Article 366, which read as under:

> ***" 363-A. Recognition granted to Rulers of Indian States to cease and* Privy Purses *to be abolished*.**— *Notwithstanding anything in this Constitution or in any law for the time being in force—*
>
> *(a) The Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before the commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler;*
>
> *(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971,* Privy Purse *is abolished and all rights, liabilities and obligations in respect of* Privy Purse *are extinguished and accordingly the Ruler, or as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as* Privy Purse *."*

Substituted or amended clause *(22) of Article 366*

> *'Ruler' means the Prince, Chief or other person, who at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler.*

25. From the above, it becomes clear that by deletion of Articles 291 and 362 and with the insertion of Article 363-A, the guarantees and assurances given as well as the recognition granted to Indian *Ruler*s was withdrawn, and they becoming part of Indian citizenry subject to ordinary Civil and Municipal law of the country.

26. Apposite to refer to observation of the Apex Court in the case of ***VEERENDRA SINGH Vs STATE OF UTTAR PRADESH*** reported in ***(1995) 1 SCR 415*** even as quoted at paragraph 97 of the Judgment in the case of ***RAGHUNATH RAO*** *supra,* which is as under:

> *"Every vestige of sovereignty was abandoned by the dominion of India and by the States and surrendered to the people of the land who through their representatives in the Constituent Assembly hammered out for themselves a new Constitution in which all were citizens in a new order having but one tie, and owing but one allegiance: devotion, loyalty, fidelity to the Sovereign Democratic Republic that is, India."*

27. It is in these factual background of the matter present petitions have been filed raising the grounds as noted above.

<u>Regarding Point No.(1):</u>

(1) Whether deletion of Articles 291 and 362 and insertion of Article 363-A of the Constitution of India has rendered provisions of Section 5(ii) of the Act, 1956 otiose and redundant?

28. Thrust of the argument on behalf of the petitioners is that the erstwhile *Ruler*s of the Princely States of India, who had integrated with the Dominion of India by entering into certain agreements/covenants, were granted constitutional guarantees and assurance by way of incorporation of Articles 291 and 362. That the said Articles 291 and 362 having been deleted by virtue of 26th amendment to the Constitution and by insertion of Article 363-A, the guarantees and assurances contained in Articles 291 and 362 have been effaced from the text. That since Section 5(ii) of the Act, 1956 being in the nature of such guarantees and assurances is traceable to the provisions of Articles 291 and 362 and since these two articles have been deleted, Section 5(ii) of the Act, 1956 shall also stand effaced.

29. On the contrary, it is the contention of contesting respondents that the deletion of Articles 291 and 362 has no bearing or effect either on existence of Section 5(ii) of the Act, 1956 or on the terms of the agreements and covenants that was entered into between the two sovereign States namely the Princely States of Mysore and Sandur (in the instant case) and the Dominion of India. According to the contesting respondents Section 5(ii) of the Act, 1956 is a recognition of the guarantees and assurances contained in terms of the agreements which will have to be read and understood in the light of Article 253 of the Constitution of India and therefore existence of Section 5(ii) of the Act, 1956 cannot be held to be otiose or redundant merely because deletion of Articles 291 and 362 or introduction of Article 363-A of the Constitution of India by way of 26th amendment.

30. Plain reading of Article 291 before its deletion, indicate that guarantee and assurance was with respect to Privy Purse, given by the Government of Dominion of India to any *Ruler*s of Indian States, who had entered into any agreements/covenants before the commencement of the Constitution. It also provided for payment of such sums

from and out of consolidated funds of India and same were also exempted from all taxes on income.

31. Similarly, reading of Article 362 indicate, that any laws made by the parliament or the legislature of the State or in exercise of its executive power of the Union or State shall have regard to the guarantee and assurance given under any agreements/covenants with respect to personal rights, privileges and dignities of the *Ruler*s of the Indian States as referred to in clause (1) of Article 291.

32. Clearly, the guarantee and assurance as contemplated under the Articles 291 and 362 was in relation to personal rights, privileges and dignities and there is nothing to indicate that the same was extended in respect of any personal/private properties of the *Ruler*s of Indian States.

33. The consequential question that would arise is notwithstanding deletion of Articles 291 and 362 and by insertion of Article 363-A, whether Section 5(ii) of the Act, 1956 has its independent existence and whether same has any relevance to the facts of the instant case.

34. The Hindu Succession Act, 1956 was enacted to amend and codify the law relating to intestate successions

among Hindus. Section 4 of the Act, 1956 providing overriding effect, which reads as under:

> ***4. Overriding effect of Act.****— (1) Save as otherwise expressly provided in this Act,—*
>
> *(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;*
>
> *(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.*

35. Section 5 of the Act, 1956 is bar to the applicability of the Act, 1956, which reads as under:

> ***5. Act not to apply to certain properties****.— This Act shall not apply to—*
>
> *(i) any property succession to which is regulated by the Indian Succession Act, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954*
>
> ***(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;***
>
> *(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.*

36. Reading of Section 5(ii) of the Act, 1956 which is sought to be deleted from the statute in these writ petitions

indicate that the bar contained therein is applicable only in respect of;

(i) any 'estate' which by its very nature descends to a single heir

(ii) such descend shall be by the terms of any covenant or agreement entered into by the *Ruler* of any Indian State with the Government of India or

(iii) by the terms of any enactment passed before the commencement of this Act.

37. Thus the bar is applicable only in respect of certain type of '*estate*', of erstwhile *Ruler* of Indian State under special circumstances as envisaged therein.

38. Apposite at this juncture to extract relevant Articles of the agreement of merger that have been entered into between the Governor General of India and His Highness of Maharaja of Mysore on 23.01.1950, produced at Annexure-D to W.P.No.53075/2015 (hereinafter referred to as `Annexure-D'), which is as under:

"ARTICLE I

(1) The Maharaja of Mysore shall, with effect from the first day of April, 1950, be entitled to receive annually for his Privy Purse *the sum of Rs. 26,00,000/- (Rupees twenty-six lakhs) free of all taxes;*

Provided that the sum specified above shall be payable only to the present Maharaja of Mysore for his life-time, and not to his successors, for whom provision will be made subsequently by the Government of India.

(2) The said amount is intended to cover all the expenses of the Maharaja and his family including expense on account of his personal staff, maintenance of his residences, marriages and other ceremonies, etc., and will neither be increased or reduced for any reason whatsoever.

(3) The said amount shall be payable to the Maharaja in four equal instalments at the beginning of each quarter in advance.

(4) The payment of the said amount as herein provided is guaranteed by the Government of India.

ARTICLE II

(1) The Maharaja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.

(2) The Maharaja will furnish to the Government of India before the twenty third day of January, 1950, an inventory of all the immovable property, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Maharaja or State property, it shall be referred to such person as the Government of India may nominate and the decision of that person shall be final and binding on all concerned.

ARTICLE III

The Maharaja and the members of his family shall be entitled to all the personal privileges, dignities and titles enjoyed by them whether within or outside the territories of the State immediately before the fifteenth day of August 1947.

ARTICLE IV

The Government of India guarantees the succession according to law and custom to the Gaddi of the State and to the personal rights, privileges, dignities and titles of the Maharaja.''

39. Similar is the agreement that was entered into between the Governor General of India and the *Ruler* of Sandur on 01.04.1949, at Annexure-F in W.P.No.35524/2018 (hereinafter referred to as `Annexure-F') relevant portion of the said agreement read as under:

''Article-1

The Raja of Sandur State hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for an in relation to the governance of the State and agrees to transfer the administration of the State to the Dominion Government on the 1st day of April, 1949. (hereinafter referred to as "the said day").

As from the said day the Dominion Government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.

Article-2

The Raja of Sandur shall with effect from the said day be entitled to receive from the revenue from the revenues of the State annually for his Privy Purse *the sum of Ninety thousand rupees free of taxes. This amount is intended to cover all the expenses of the Ruler and his family, including expenses on account of his personal staff, maintenance of his residences, marriage and other ceremonies, etc. and will neither be increased nor reduced for any reason whatsoever.*

The said sum may be drawn by the Raja in four equal installments in advance at the beginning of each quarter by presenting bills at the State Treasury or at such other Treasury as may be specified by the Dominion Government.

Article-3

The Raja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State property) belonging to him on the date of this agreement, and specified in the schedule hereunto appended.

Article-4

The Raja, the Rani, the Rajmata, the Yuvraj and the Yuvrani shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before the 15th day of August 1947.

<u>Article-5</u>

The Dominion Government guarantees the succession, according to law and custom, to the gadi of the State and to the Raja's personal rights, privileges, dignities and titles.

40. Reading of Article I and Article III of the agreement at Annexure-D and Article 2 and Article 4 at Annexure-F indicate that they pertain to understanding between the Dominion of India on one part and *Ruler*s of Mysore and Sandur Princely States on the other part respectively, providing for payment of Privy Purse and assurance with respect to personal privileges, dignities and titles of the said *Ruler*s.

41. Article II of Annexure-D and Article 3 of Annexure-F speak about entitlement of the *Ruler*s to the full ownership, use and enjoyment of all private properties (as distinct from state properties). There is no any guarantee and assurance with regard to the succession to such private properties.

42. Article IV at Annexure-D and Article 5 at Annexure-F expressly speak about guarantee by the Dominion Government to the succession according to law and

custom to the (i) *Gaddi* and (ii) personal rights, privileges, dignities and titles.

43. Though the aforesaid covenants contained in Article I and Article III of the agreement at Annexure-D and Article 2 and Article 4 at Annexure-F with regard to payment of Privy Purse and assurance with regard to personal privileges, dignities and titles have been done-away with by deletion of Articles 291 and 362, the entitlement with regard to all the "*private properties*" as well as rules of succession to the "*Gaddi*" of the *Ruler* of Mysore as provided under Article-II and Article-IV at Annexure-D and of *Ruler* of Sandur as provided under Article 2 and Article 5 at Annexure-F remained unaltered.

44. As such, question with regard to succession to the "*private properties*" as distinct from the state properties and succession to *"Gaddi" or* "*impartible estate*" of a *Ruler* is to be adverted, subject to applicability of the provisions of the Act, 1956, with specific pleading and proof of customs, if any, indicating to the contrary.

45. This aspect of the matter had come up for consideration though under different contexts *i.e.,* in the appeals filed

from the original judgment and decree passed in the suit for partition, by some of the erstwhile *Ruler*s under identical facts and circumstances as that of the case at hand. One of the such judgments of the Apex Court is in the case of ***TALAT FATHIMA HASAN Vs SYED MURTAZA ALI*** reported in ***(2020) 15 SCC 655***, wherein the Apex Court has distinguished the ownership of the private properties of the *Ruler* so declared by him in agreement of accession with that of the entitlement to the *Gaddi*. As regards the private properties, the Apex Court has held that the devolution/succession to the private properties would be as per the personal law governing the parties while succession to *Rulership* or *Gaddi* would be governed by the rule of primogeniture.

46. In the case of ***MAHARANI DEEPINDER KAUR (since deceased) through Legal Representatives and others Vs RAJKUMARI AMRIT KAUR AND OTHERS*** reported in **(2022) 9 SCC 658** three Judges Bench of the Apex Court has held that the rule of primogeniture does not apply to the private properties, however, it is required to be proved only by way of evidence to the satisfaction of the Court, with necessary particular

pleadings and by adducing cogent material evidence. The Apex Court, referring to the terms of the agreement subject matter of the said case, similar to that of the one in the instant case, found that the guarantee under the covenant therein was only in respect of succession to *Gaddi* and not to the private properties of the ex-*Ruler*. The Apex Court has also adverted to provisions of Section 5 of the Act, 1956 in the said judgment and has held that the succession in respect of private properties was to be governed under the provisions of Act, 1956.

47. The Apex Court in the case of ***TIKKA SHATRUJIT SINGH*** *supra*, taking note of its aforesaid earlier judgments including the judgments rendered on the constitutional validity of deletion of Articles 291 and 362, in the case of ***RAGHUNATH RAO*** *supra*, and specifically referring to Section 5(ii) of the Act, 1956, at paragraph Nos.77 to 80 and 94 of the said judgment has held as under:

> *" **77.** It may not be out of context to refer to Section 5 of the Hindu Succession Act, 1956, which came into force on 17 June 1956. The aforesaid Act provides for overriding effect over any text, rule or interpretation of Hindu Law or any custom or usage as part of Law in force and that such law shall cease to have effect with respect to any matter provided for under the Act. Sections 6 and 8 of the Act provide for the devolution of interest in coparcenary property, and Section 5 is an exception to it. The relevant part of Section 5, for our purposes, is reproduced herein below:*

"5. Act not to apply to certain properties.—This Act shall not apply to—

(i) …

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) …"

78. *The aforesaid Section 5 (ii) of the Hindu Succession Act specifically excludes the application of the Act to the estates which descend to a single heir of a Ruler under the terms of the covenant or agreement of merger with the Government of India. However, the aforesaid provision was not in force at the relevant time when the properties in question devolved upon Maharaja Paramjit Singh in 1949. At that point, the succession opened under the ordinary law in force. Therefore, the consequent devolvement of the personal private properties of the Maharaja would also be viewed through the lens of the personal law applicable to the parties at that time.*

79. *In Trijugi Narain (supra), this Court relied upon Bhaiya Ramanuj Pratap Deo (supra), which only observed that Section 5 (ii) of the Hindu Succession Act protects an estate which descends to a single heir by the terms of any covenant and that the Hindu Succession Act would not be applicable to such estates. However, interestingly, in the case at hand, the estate/the private properties declared by the Ruler devolved upon the single heir, Maharaja Paramjit Singh, on 19.06.1949 immediately after the merger agreement. At that time, the Hindu Succession Act was not in force. The said Act was enforced with effect from 17.06.1956, and by that time, the properties had already acquired the status of private property of the then Ruler, Maharaja Paramjit Singh, in his capacity as an ordinary citizen, due to the signing of the merger agreement. Accordingly, the Hindu Succession Act or Section 5(ii) of the Act, which exempts estates descending to a single heir under a covenant, is not applicable here. The said properties/estate did not constitute the Ruler's estate, as the merger covenant guaranteed such custom only for the Gaddi (throne), not for private property. As the private properties of an ordinary citizen, they were required to devolve according to the ordinary personal law then in force, namely, the Hindu Mitakshara Law.*

80. *In view of the above discussion that the properties declared to be the private properties of the Maharaja would devolve according to Hindu Law/Law of Succession and not by rule of primogeniture, the judgment and order of the learned Single Judge as well as of the Division Bench of the High Court which holds that the rule of primogeniture would prevail in the succession of properties is illegal and is unsustainable in law.*

94*. On the basis of the above discussion, our conclusions are summarized as under:—*

(i) There is a general presumption in India that the estate of the Ruler and monarch of a princely state, as per the custom, stands governed by the rule of male lineal primogeniture;

(ii) After the signing of the agreement of merger and notification of certain properties as the personal private properties of the Maharaja, only the perceived throne devolved according to the rule of primogeniture, but not the personal private properties of the Ruler;

(iii) Following the lapse of the British paramountcy and the signing of the agreement of merger, the Maharaja assumed the status of the Ruler only for the namesake to succeed to the Gaddi and to enjoy certain privileges attached to it, the personal private properties declared to be so by him would devolve upon his successors in accordance with the Muslim/Hindu Law or subsequently in accordance with the Hindu Succession Act and not by the rule of primogeniture;

(iv) The Division Bench decision in Trijugi Narain (supra) would not override the ratio laid down by the three-Judges Bench in the cases of Travancore, Talat Fatima Hasan (Rampur) (supra) and Faridkot. The Three-Judge Bench decision in the Faridkot case, being the latest in time, may be without referring to Trijugi Narain (supra), the ratio laid down therein would prevail and thus the properties declared to be the personal private properties of the Ruler would devolve not according to the rule of primogeniture but according to the personal law, whether Muslim Law or Hindu Law;

(v) Finally, of the four immovable properties, three, as stated earlier, are in the joint names of the family members. Therefore, irrespective of the applicability of the rule of primogeniture or the Hindu law, they are liable to division between the joint holders; and

(vi) Lastly, the only immovable property which remains is the property at Mussoorie, i.e., Kapurthala Chateau, and St. Helens, Mussoorie would devolve upon the successors under Hindu Law and are divisible amongst the family members.''

48. Contents of the agreements at Annexures-D and F as already noted above, read in the light of the enunciation of law by the Apex Court in the cases of ***TALAT FATHIMA HASAN*** *supra*, ***MAHARANI DEEPINDER KAUR*** *supra*, and ***TIKKA SHATRUJIT SINGH*** *supra*, clarifies the position that as regards succession to impartible estate as that of *Gaddi* , which though

presently carries only cultural and ceremonial significance, has to be in terms of the covenant guaranteed under law and customs. Meaning thereby, the "*impartible estate*" would devolve and succeed in terms of provisions of Section 5(ii) of the Act, 1956 however subject to proof and pleading of customs and practices to the contrary if any.

49. The controversy as to whether Section 5(ii) of the Act, 1956 has become otiose or redundant merely because deletion of Articles 291 and 362 or introduction of Article 363-A of the Constitution of India by way of 26th amendment or it has its own independent existence in the light of agreements and covenants can also be well understood by the observation of the Apex Court at paragraph Nos.58 and 59 of its judgment in the case of ***RAGHUNATH RAO*** *supra*, which read as under:

> *"**58.** The question whether Article 291 is a provision related to the Covenants and Agreements entered into between the Rulers of the States and Indian Dominion and is that in reality and substance a provision on the subject-matter of covenants and agreements were considered by Hidayatullah, C.J. in his separate concurring judgment in Madhav Rao [(1971) 1 SCC 85 : (1971) 3 SCR 9] and they are answered in the following terms: (SCC p. 141, para 76)*
>
> > *"The article when carefully analysed leads to these conclusions: The main and only purpose of the provision is to charge* Privy Purses *on the Consolidated Fund of India and make obligatory their payment free of taxes on income. It narrows the*

> *guarantee of the Dominion Government from freedom from all taxes, to freedom only from taxes on income. Earlier I had occasion to show that the Princes had guaranteed to themselves their* Privy Purses *free of all taxes. The Dominion Government had guaranteed or assured the same freedom. The Constitution limits the freedom to taxes on income and creates a charge on the Consolidated Fund. There were other guarantees as in the Merger Agreements of Bilaspur and Bhopal (quoted earlier) which are ignored by the article. The guarantee of the Dominion Government is thus continued in a modified form.* ***The reference to Covenants and Agreements is casual and subsidiary.*** *The immediate and dominant purpose of the provision is to ensure payment of* Privy Purse *s, to charge them on the Consolidated Fund and to make them free of taxes on income."*
>
> *(original emphasis)*

59. *Shah, J. speaking for the majority with reference to the covenants and agreements made the following observation:*

> *"After the Constitution the obligation to pay the* Privy Purse *rested upon the Union of India, not because it was inherited from the Dominion of India; but because of the constitutional mandate under Article 291.* ***The source of the obligation was in Article 291, and not in the covenants and the agreements****."*
>
> *(original emphasis)'*

50. Thus, the aforesaid observation of the Apex Court further makes it clear that deletion of Articles 291 and 362 and insertion of Article 363-A to the Constitution of India have no bearing on the covenants and terms of the instruments of merger more particularly with regard to succession to ''*private properties*'' and "*Gaddi* ".

<u>Regarding Point No.(2):</u>

(2) Whether with the passage of time provisions of Section 5(ii) of the Act, 1956 has become arbitrary, discriminatory, irrational and therefore unconstitutional?

51. Petitioners have not raised the ground on legislative competence but have raised the grounds of arbitrariness, discrimination and irrationality. The contentions of the learned counsel for the petitioners in this regard are that Section 5(ii) of the Act, 1956 has lost its relevancy with passage of time and it has no nexus with the object which was initially sought to be achieved. Since, the private properties of the *Ruler*s which are now family properties amenable for partition, all the descendants of the *Ruler*s being entitled for their share, there cannot be any discrimination in distribution of the same. Even for the purpose of symbolic throne which is referred to as *Gaddi* there cannot be any separate classification as the very concept of *Gaddi* has lost its meaning and purport. Thus, retaining Section 5(ii) of the Act, 1956 in the statute would amount to maintaining and continuing an invalid and discriminatory provision providing for arbitrary classification, contrary to the provisions of Article 14 of the Constitution of India. Reference in this regard is made to paragraph Nos.17, 18 and 30 of the judgment of the Hon'ble Apex Court in the case of ***MOTOR GENERAL TRADERS AND ANR Vs STATE OF ANDHRA PRADESH***

AND OTHERS reported in ***(1984) 1 SCC 222***. In the said case, the Hon'ble Apex Court was dealing with constitutional validity of certain provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act, 15 of 1960), which exempts all buildings constructed on and after August, 25th, 1957 from the operation of the said Act. In view of reorganization of State, certain parts of erstwhile State of Madras, became part of State of Andhra Pradesh. However, the Madras Buildings (Lease and Rent Control) Act, 1949 (Madras Act, 25 of 1949), continued to be in operation in the State of Andhra Pradesh. It is in this factual background, the Hon'ble Apex Court has held as under:

> *'' A piece of legislation which was justified at the time of its entry into the statute book may become arbitrary and discriminatory with the passage of time and change of circumstances, and must be struck down if it fails to satisfy the requirements of Article 14 in the altered context.''*

52. Petitioners have also relied upon the paragraph Nos. 16, 17, 34 and 35, of the judgment of the Apex Court in the case of ***SATYAWATI SHARMA Vs UNION OF INDIA*** reported in ***(2008) 5 SCC 287*** in support of their contention that, legislation subsequently loosing rationale

of classification on the basis of which it was enacted and thereby becoming arbitrary and unreasonable with lapse of time and changed circumstances. Facts involved in the said matter was with regard to interpretation of rent control legislation, interpretation of which in most of the judgments of the years 1950's to 1990's by the Apex Court and the High Courts had indicated object of such legislation to provide safeguards for the tenants against the exploitation by the landlords. It is under these circumstances at paragraph Nos.16 and 32, the Hon'ble Apex Court has held as under:

> ***16.*** *Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject-matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the directive principles of State policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.*

> *32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.''*

53. As regards, classification test under Article 14 of the Constitution of India, learned counsel for the petitioners have relied upon the paragraph Nos.3, 4, 12, 13, 14, 29, 30, 31, 44 and 45 of the judgment in the case of ***STATE OF WEST BENGAL Vs ANWAR ALI SARKAR*** reported in ***(1952) 1 SCC 1***. Facts involved in said case are with regard to constitutional validity of provisions of Section 5(i) of the West Bengal Special Courts Act, 1950 as well as certain notification issued under it by reason of they being in conflict with Article 14 of the Constitution of India. The Special Bench of the High Court of Calcutta, had held that Section 5(i) of the West Bengal Special Courts Act, 1950 to be void to the extent it had empowered the State to direct any case to be tried by the Special Court. It also held that notifications issued under said Sub-Section were also invalid for the same reason. It

was this order of the Special Court which was dealt with by Seven Judges Bench of the Apex Court;

Hon'ble Sri.B.K. Mukherjee, J. delivering the judgment, at paragraph No.18 held as under:

> ***18.*** *It has been observed in many cases by the Supreme Court of America that the fact that some sort of classification has been attempted at will not relieve a statute from the reach of the equality clause.*
>
> *"… it must appear that not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification…." (Ellis case [Gulf, Colorado & Santa Fe Railway Co. v. Ellis, 41 L Ed 666 : 165 US 150 (1897) : 1897 SCC OnLine US SC 20] , L Ed p. 672)*
> *The question in each case would be : Whether the characteristics of the class are such as to provide a rational justification for the differences introduced? Judged by this test, the answer in the present case should be in the negative : for the difference in the treatment rests here solely on arbitrary selection by the State Government. It is true that the presumption should always be that the legislature understands and correctly appreciates the needs of its own people and that its discriminations are based on adequate grounds. ''*

Hon'ble Sri.Chandrashekar Ayer, J. (Concurring) at paragraph 29 held as under:

> ***29****. It is well settled that equality before the law or the equal protection of laws does not mean identity or abstract symmetry of treatment. Distinctions have to be made for different classes and groups of persons and a rational or reasonable classification is permitted, as otherwise it would be almost impossible to carry on the work of the Government of any State or country.''*

Hon'ble Sri.Vivan Bose, J. (Concurring) at paragraph Nos.44 and 45, held as under:

> ***44****. Take first the words "equality before the law". It is to be observed that equality in the abstract is not guaranteed but only equality before the law. That at once leads to the question, what is the law, and whether "the law" does not draw distinctions between man and man and make for*

inequalities in the sense of differentiation? One has only to look to the differing personal laws which are applied daily to see that it does; to trusts and foundations from which only one particular race or community may benefit, to places of worship from which all but members of particular faith are excluded, to cemeteries and towers of silence which none but the faithful may use, to the laws of property, marriage and divorce. All that is part and parcel of the law of the land and equality before it in any literal sense is impossible unless these laws are swept away, but that is not what the Constitution says, for these very laws are preserved and along with equality before the law is also guaranteed the right to the practice of one's faith.

***45**. Then, again, what does "equality" mean? All men are not alike. Some are rich and some are poor. Some by the mere accident of birth inherit riches, others are born to poverty. There are differences in social standing and economic status. High sounding phrases cannot alter such fundamental facts. It is therefore impossible to apply rules of abstract equality to conditions which predicate inequality from the start; and yet the words have meaning though in my judgment their true content is not to be gathered by simply taking the words in one hand and a dictionary in the other, for the provisions of the Constitution are not mathematical formulae which have their essence in mere form. They constitute a framework of the Government written for men of fundamentally differing opinions and written as much for the future as the present. They are not just pages from a textbook but form the means of ordering the life of a progressive people. There is consequently grave danger in endeavouring to confine them in watertight compartments made up of readymade generalisations like classification. I have no doubt those tests serve as a rough and ready guide in some cases but they are not the only tests, nor are they the true tests on a final analysis.*

54. Petitioners have also relied upon the paragraph Nos.11, 12 of ***SRI RAMAKRISHNA DALMIA Vs S.R.TENDOULKAR AND OTHERS*** reported in ***1958 SCC Online SC 6*** on the principles of test under Article 14 of the Constitution of India. The question that fell for consideration in the said case before 5 Judges Bench of

the Apex Court was validity of certain notifications that had been issued by the Union of India in exercise of its power conferred on it by Section 3 of Commission of Enquiry Act, (60 X of 1952). The High Court of Bombay had dismissed the challenge holding the notification as legal and valid, except as to the last part of said notification. The Apex Court relying upon its earlier judgments rendered on the scope of Article 14 of Constitution at paragraphs 11 and 12 held as under:

> ***11.....*** *......The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—*
>
> *(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;*
> *(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;*
> *(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;*
> *(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;*
> *(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and*
> *(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.*

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

12. *A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution, may be placed in one or other of the following five classes:*

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in Chiranjitlal Chowdhri v. Union of India [1950 SCC 833 : (1950) SCR 869] State of Bombay v. F.N. Balsara [1951 SCC 860 : (1951) SCR 682] Kedar Nath Bajoria v. State of West Bengal [(1953) 2 SCC 142 : (1954) SCR 30] , S.M. Syed Mohammad & Company v. State of Andhra [(1954) SCR 1117] , and Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045] .

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in Ameerunnissa Begum v. Mahboob Begum [(1952) 2 SCC 697 : (1953) 1 SCC 274 : (1953) SCR 404] and Ramprasad Narain Sahi v. State of Bihar [(1953) 1 SCC 274 : (1953) SCR 1129] .

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that,

therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in State of West Bengal v. Anwar Ali Sarkar [(1952) 1 SCC 1 : (1952) SCR 284] Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh [(1954) SCR 803] and Dhirendra Krishna Mandal v. Superintendent and Remembrancer of Legal Affairs [(1955) 1 SCR 224] .

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional, as it did in Kathi Raning Rawat v. State of Saurashtra [(1952) 1 SCC 215 : (1952) SCR 435] .

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court e.g. in Kathi Raning Rawat v. State of Saurashtra that in such a case the executive action but not the statute should be condemned as unconstitutional.

55. On the contrary, learned counsel for the respondents contended that constitutionality of any statute can be tested on two grounds namely; (1) lack of legislative competence; and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

56. The Hon'ble Apex Court in the case of ***McDOWELL AND Company*** *supra*, at paragraph No.43 has held as under:

43. *…….. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground.*

We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness — concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately — an expression of inherently imprecise import. ……

57. Relevant also to refer to the Judgment of the Hon'ble Apex Court in the case of ***SHAYARA BANO VS. UNION OF INDIA*** reported in ***(2017) 9 SCC 1*** wherein at paragraph 101 it has held as under:

> ***101.*** *It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and*

> *disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.*

58. Thus above enunciation of law on the test of Article 14 manifestly indicate that what is forbidden is "*class legislation*" and not "*reasonable classification*" for the purpose of legislation.

59. Factual background which led to entering into merger agreements by the erstwhile *Ruler*s of the Princely States of India with the Dominion of India, resultant inclusion of Articles 291 and 362 of the Constitution of India which subsequently were deleted by 26th amendment to the Constitution and its effect on provisions of Section 5(ii) of the Act, 1956 have already been dealt with while answering point No.1.

60. As held by the Apex Court in the case of ***RAMAKRISHNA DALMIA*** *supra*, "*a statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be*

gathered from the surrounding circumstances known to or brought to the notice of the court".

61. Language employed in Section 5(ii) of the Act, 1956 clearly indicate it is directed to a specific nature of `*estate*' of specific class of `*person*' under `*specific circumstance'* which is indeed an intelligible differentia. Petitioners have not denied this aspect of the matter. In fact according to the petitioners said provision when promulgated was valid and relevant but has now lost its relevance by passage of time. This contention cannot be countenanced. Determination of issue with regard to succession to private properties as well as to impartible estate is still a relevant subject. It may be that purport and object of *Gaddi* has lost its relevance but from the customary practical perspective it is still a relevant subject.

62. Thus the petitioners have not made out a case that the provisions of Section 5(ii) of the Act, 1956 having become arbitrary, discriminatory, unreasonable and loosing its rational classification with lapse of time. Besides, reliance placed on by learned counsel for the petitioners onto the Judgments referred to above in

support of this contention are of no avail under the fact situation involved in the case at hand.

Regarding Point No.3

(3) Whether a direction is required to be issued to the respondent-Union of India to delete Section 5(ii) of the Act, 1956 from the statute as sought for by the petitioners?

63. Settled principles of law, a party questioning the constitutionality of a statute on the test of `*equality*' is required to discharge the burden regarding violation of his rights guaranteed under Article 14. In the light of answer to point No.2 this Court is of the considered view that the petitioners have not discharged their burden proving any violation of Article 14 of the Constitution of India by the legislature incorporating Section 5(ii) of the Act, 1956.

64. As rightly pointed out by Sri.Vivek Holla, learned counsel appearing for respondent No.2, the petitioners are primarily required to show the adverse affect of Section 5(ii) of the Act, 1956. In the absence of the same and more particularly when the petitioners have not raised the issue of legislative competence and when they have neither pleaded nor discharged the burden of violation of

their fundamental rights guaranteed by the Constitution of India, which are the primary tests for examining the constitutional validity of a statute, petitioners cannot seek to annul a legislative provision.

65. Hon'ble Apex Court in the case of ***KUSUM INGOTS AND ALLOYS LTD*** *supra*, at paragraph Nos.19, 20 and 21 has held as under:

> *''**19.** Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.*
>
> ***20.** A distinction between a legislation and executive action should be borne in mind while determining the said question.*
>
> ***21**. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.''*

66. The Apex Court in the case of ***TIKKA SHATRUJIT SINGH AND OTHERS*** *supra*, has clarified and concluded that after the signing of the agreement of merger and notification of certain properties as the personal private properties of the Maharaja, only the perceived throne would devolve according to the rule of primogeniture, and not the personal private properties of the *Ruler*;

67. In the that view of the matter apprehension of the petitioners that Section 5(ii) of the Act, 1956 bars application of provisions of Act, 1956 to the personal private properties of the *Ruler* stands redressed. However, party contending to the contrary shall discharge the burden by particular pleading and proof to the satisfaction of the court.

68. There is yet another aspect of the matter which requires consideration in the light of submission made by learned Senior counsel, Sri.Pramod Nair, and Sri. M. N. Kumar, appearing for respondents insisted that in the light of judgment of the Hon'ble Apex Court in the case of ***TIKKA SHATRUJIT SINGH AND OTHERS*** *supra*, where the Hon'ble Apex Court has adverted to the applicability of Section 5 of the Act, 1956, the exercise of testing the constitutionality of the provisions of Section 5(ii) of the Act, 1956 from the anvil of arbitrariness and discrimination is unwarranted.

69. In this regard appropriate therefore to refer to ''*doctrine of reading down*'' of a legislative enactment. The purpose and purport of this doctrine is to save a provision from the vice of unconstitutionality. That the said doctrine

refers to a legal interpretation, whereby the Court examining the validity of a statute attempts to give a narrow or restricted meaning to a particular provision in order to uphold its constitutionality. Reference in this regard can be made to the following judgment of the Apex Court in the case of ***AUTHORIZED OFFICER, CENTRAL BANK OF INDIA Vs. SHANMUGAVELU*** reported in ***(2024) 6 SCC 641,*** wherein referring its earlier Judgment on the doctrine at paragraph Nos.94 to 97 and 100 has held as under:

> ***'' 94.*** *The principle of "reading down" a provision refers to a legal interpretation approach where a court, while examining the validity of a statute, attempts to give a narrowed or restricted meaning to a particular provision in order to uphold its constitutionality. This principle is rooted in the idea that courts should make every effort to preserve the validity of legislation and should only declare a law invalid as a last resort.*
>
> ***95.*** *When a court encounters a provision that, if interpreted according to its plain and literal meaning, might lead to constitutional or legal issues, the court may opt to read down the provision. Reading down involves construing the language of the provision in a manner that limits its scope or application, making it consistent with constitutional or legal principles.*
>
> ***96.*** *The rationale behind the principle of reading down is to avoid striking down an entire legislation. Courts generally prefer to preserve the intent of the legislature and the overall validity of a law by adopting an interpretation that addresses the specific constitutional concerns without invalidating the entire statute.*
>
> ***97.*** *It is a judicial tool used to salvage the constitutionality of a statute by giving a provision a narrowed or limited interpretation, thereby mitigating potential conflicts with constitutional or legal principles.*

> ***100.*** *Thus, the principle of "Reading Down" a provision emanates from a very well-settled canon of law, that is, the courts while examining the validity of a particular statute should always endeavour towards upholding its validity, and striking down a legislation should always be the last resort. "Reading Down" a provision is one of the many methods, the court may turn to when it finds that a particular provision if for its plain meaning cannot be saved from invalidation and so by restricting or reading it down, the court makes it workable so as to salvage and save the provision from invalidation. Rule of "Reading Down" is only for the limited purpose of making a provision workable and its objective achievable.''*

70. Facts of the case at hand viewed even in the light of principle of "*reading down*" do not persuade this Court to undertake the exercise of testing the said provision from the lens of arbitrariness, discrimination, irrationality and unreasonableness.

71. Suffice to state, relevancy and efficacy of the provisions of Section 5(ii) of the Act, 1956 have been adverted to and dealt with by the Hon'ble Apex Court in the judgment of the ***TIKKA SHATRUJIT SINGH AND OTHERS*** *supra*. Thus, unless the petitioners expressly demonstrate that the existence of the said provision in the Statute would adversely affect their statutory or their fundamental rights, this Court do not deem it appropriate to issue a declaration as sought for.

72. **<u>Conclusion</u>**:

For the aforesaid reasons and analysis, the points raised above are answered as under:

(a) Instruments of Merger at Annexures-D and F specifically deal with three aspects of the matter namely;

> *(1)* Privy Purse*, personal rights, privileges, dignities and titles of the Ruler;*
>
> *(2) Private properties (as distinct from state properties) belonging to the Ruler;*
>
> *(3) Succession to Gaddi according to law and custom.*

(b) Articles 291 and 362 were only with respect to guarantees and assurances made by the Dominion of India with regard to payment of Privy Purse, personal rights, privileges, dignities and titles of erstwhile *Ruler*s of Princely States of India and not with respect to their personal private properties and *"Gaddi",* impartible estate;

(c) Deletion of Articles 291 and 362 and insertion of Article 363-A by 26^{th} amendment to the Constitution has no bearing on the validity or otherwise of Section 5(ii) of the Act, 1956.

(d) Legal recognition of "sovereign authority" which was attached to a "*Gaddi* " or "*throne*" of erstwhile *Ruler* has been completely derecognized and abolished by 26th amendment to the Constitution, rendering it to be a mere reference to "*Physical throne*" or "*Seat*" which now carries only a historical and cultural relevance of an artifact or heirloom.

(e) the provisions of Section 5(ii) of the Act, 1956 will have its relevance to the extent of providing rules of succession to an '*impartible estate*", to be according to law and custom in view of covenants contained in instruments of merger at Article IV of Annexure-D and Article 5 of Annexure-F.

(f) Apprehension of the petitioners regarding provisions of Section 5(ii) of the Act, 1956 being arbitrary, discriminatory and unreasonable stands redressed in the light of clarification by the Apex Court in its judgment in the case of ***TIKKA SHATRUJIT SINGH AND OTHERS*** *supra*, to the effect that the personal private properties of the *Ruler* will be governed in terms of the personal law of the parties and impartible estate as that of perceived throne would devolve according to the rule of primogeniture. Party contending to the contrary is required to plead and prove to the satisfaction of the Court.

(f) No sufficient grounds are made out to declare Section 5(ii) of the Act, 1956 to be otiose or redundant warranting issuance of direction to delete the said provision from the statute as sought for.

Consequently, the following:

ORDER

(i) Writ Petitions are ***dismissed.***

(ii) No order as to costs.

SD/-
(M.G.S. KAMAL)
JUDGE

Assistance rendered by Ms.Rao Shivani Dinesh and Ms.Sania Niyaz Research Assistants, is appreciated and placed on record.

RL