

**2022 LiveLaw (SC) 623**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**A.M.KHANWILKAR; J., ABHAY S. OK; J., C.T. RAVIKUMAR; J.**

July 21, 2022

**The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore & Anr. v. Vipin Dhanaitkar & Ors.**

**Trust - A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust. (Para 45)**

**Madhya Pradesh Public Trusts Act, 1951; Section 14 - Powers of Registrar - When a Trust property is transferred without prior sanction of the Registrar under Section 14 and/or without following a fair and transparent process, it can be always said that the Trust property is not being properly managed or administered - The Registrar can refuse sanction only when he is satisfied that the transactions will be prejudicial to the interests of the Public Trust. (Para 43 - 47)**

**Madhya Pradesh Public Trusts Act, 1951; Section 36 - Sub-Sections (1) and (2) of Section 36 operate in different fields. When sub-Section (1) is applicable to a Public Trust, none of the provisions of the Public Trusts Act is applicable to the Trust. Sub-Section (2) is an independent power of the State Government to issue a notification exempting certain Public Trusts from all or any of the provisions of the Public Trusts Act. (Para 39)**

**Summary : SC set aside the direction issued by MP HC for an investigation by the Economic Offences Wing (EOW) against the trustees of the Khasgi (Devi Ahilyabai Holkar Charities) Trust of Indore over alleged misappropriation of government properties - Madhya Pradesh Public Trusts Act 1951 will apply to the Khasgi trust and directed the trustees to get the Khasgi Trust registered under the Public Trusts Act by making the necessary application within a period of one month - Registrar under the Public Trusts Act, having jurisdiction over Khasgi Trust, to call for the record of the Trust relating to all the alienations made by the Trustees.**

CIVIL APPEAL NO. OF 2022 [ @ SLP (CIVIL) No. 12133 of 2020] WITH CIVIL APPEAL NO. OF 2022 [ @ SLP (CIVIL) No. 12241-12242 of 2020]  
CIVIL APPEAL NO. OF 2022 [ @ SLP (CIVIL) No. of 2022] [D. No. 22151 of 2020] CIVIL APPEAL NO. OF 2022 [ @ SLP (CIVIL) No. 19063 of 2021]

(Arising out of impugned final judgment and order dated 05-10-2020 in WP No. 11234/2020 passed by the High Court of M.P. at Indore)

*For Parties: Ms. Qurratulain, AOR Mr. Brij Kishore, Adv. Ms. Shivani Rautela, Adv. Mr. Adarsh Pandey, Adv. M/S. Pba Legal, AOR Ms. Ruby Singh Ahuja, Adv. Ms. Tahira Karanjawala, adv. Mr. Aman Ahluwalia, Adv. Ms. Kritika Sachdeva, Adv. Mr. Varun Khanna, adv. Mr. Lakshya Khanna, adv. Mr. Sidhant Kumar Marwah, adv. M/S. Karanjawala & Co., AOR Mr. Arjun Garg, AOR Mr. Ronak Karanpuria, AOR Mr. Pulkit Tare, AOR Mr. Saurabh Mishra, AAG Mrs. Mrinal Gopal Elker, AOR Mr. Arvind Kumar Sharma, AOR Mr. Utsav Trivedi, Adv. Mr. Abhinay, AOR Mr. Manini Roy, Adv. Mr. Himanshu Sachdeva, Adv. Ms. Shivani Bhushan, Adv. Ms. Unnati Vijay, Adv. Mr. Pooran Chand Roy, Adv. Ms. Naheed Carrimjee, Adv. Mr. Sohan Kinkhabwala, Adv. Mr. P. S. Sudheer, AOR Mr. Shruti Jose, Adv. Mr. Rishi Maheshwari, Adv. Ms. Anne Mathew, Adv. Mr. Bharat Sood, Adv. Mr. Prashant Bhushan, AOR Ms. Neha Rathi, Adv. Mr. Alice Raj, Adv. Mr. Rahul Gupta, Adv. Mr. Umang Shankar, AOR Mr. Mayank Kshirsagar, AOR Ms. Anu Gupta, AOR Ms. Beena Goyal, Adv. Mr. Hitesh Kumar Sharma, adv. Mr. Akhileshwar Jha, Adv. Ms. Deepti Chopra, Adv. Mr. Amit Kumar, AOR*

## J U D G M E N T

### ABHAY S. OKA, J.

1. Permission to file Special Leave Petition is granted. Leave granted.

### FACTUAL MATRIX

2. These appeals take exception to the common judgment and order dated 5<sup>th</sup> October 2020 of a Division Bench of the High Court of Madhya Pradesh, Bench at Indore. By the said decision, the Madhya Pradesh High Court decided two Writ Appeals filed by the appellants in Civil Appeals arising out of Special Leave Petition (C) 12133 of 2020 and Special Leave Petition (C) No. 12241-42 of 2020. The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore (for short, 'the Khasgi Trust') and its Trustee Shri S. C. Malhotra are the said appellants. The two writ appeals decided under the impugned judgment arise out of Writ Petition Nos. 11618 of 2012 and 5372 of 2010 filed by the Khasgi Trust. Writ Appeal No. 92 of 2014 arises out of Writ Petition No. 11618 of 2012. The Writ Appeal No. 135 of 2014 arises out of Writ Petition No. 5372 of 2010. By the impugned judgment, a Public Interest Litigation filed by the first respondent—Shri Vipin Dhanaitkar in Civil Appeal arising out of Special Leave Petition (C) No. 12133 of 2020 was also decided.

3. The controversy revolves around the properties claimed by the Khasgi Trust as the Trust Properties. On 30<sup>th</sup> October 1948, an instrument called as "The Covenant" was executed by the erstwhile Rulers of Gwalior, Indore and certain other States in Central India for the formation of the United State of Gwalior, Indore and Malwa (Madhya Bharat). Late Yashwantrao Holkar, the Maharaja of Indore (for short "the Maharaja") was a party to the said Covenant who agreed to unite and integrate the territory of Indore into one State with a common executive, legislature and judiciary, by the name of the United State of Gwalior, Indore and Malwa (Madhya Bharat). Article XII provided that the Ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from the State Properties) belonging to them on the date of their making over the administration of their respective States to Raj Pramukh (the Head of the State of the United State of Gwalior, Indore and Malwa). Article XII further provided that the Ruler of each covenanting State shall furnish to Raj Pramukh, before the first day of August 1948, an inventory of all immovable properties, securities and cash balance held by him. The Convention further provided that if any dispute arises as to whether any item of property is a private property of the Ruler or a State Property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh. It is further provided that the decision of that person shall be final and binding on all parties concerned. It appears that Maharaja Yashwantrao Holkar submitted two inventories in terms of Article XII. The first inventory was concerning his alleged private properties. The second inventory submitted by the Maharaja was of the properties known as the Khasgi Properties. In terms of Clause (3) of Article XII, the Government of India appointed Shri V.P. Menon, the Secretary of the Ministry of States as the authority to decide the claims. By the letter dated 7<sup>th</sup> May 1949, Shri V.P. Menon informed the Maharaja that the claim made by him in respect of his private properties as listed in Annexure 'A' to the said letter has been finally approved, accepted and signed in pursuance of Article XII of the Covenant. Annexure 'A' contains a detailed description of

the private properties of the Maharaja, which are accepted as per Article XII of the Covenant to be his private properties. By another letter dated 6<sup>th</sup> May 1949, Shri V.P. Menon informed the Maharaja that his claim in respect of the properties described as the Khasgi properties has been finally settled on the basis of the enclosure to the said letter. In the enclosure to the letter, it was mentioned that the Khasgi properties and income received from the Khasgi properties shall be treated as lapsed for all the time to the Madhya Bharat Government. In lieu thereof, certain guarantees were given. The enclosure provided that the Madhya Bharat Government shall in perpetuity set aside a sum of Rs.2,91,952/- (Rupees Two Lakh Ninety-One Thousand Nine Hundred and Fifty-Two only) for the charities. The amount shall be put under a permanent Trust for the said charities, including the charities of Maharani Ahilya Bai Holkar. It provided that the Trust shall consist of the Ruler of erstwhile Indore State, who will be the President. There will be two nominees of the Ruler. One nominee shall be of the Central Government, and two nominees shall be of the Madhya Bharat Government. However, it was stated that the trustees nominated by the Government of India and the Madhya Bharat State shall be appointed in consultation with the Ruler. It provided that powers and functions of the Trust shall be subject to such legislation as the Central Government or the Madhya Bharat Government may enact generally to regulate such Trusts. However, the composition of the Trust and the manner of its formation shall not be liable to any modification or change by such legislation.

**4.** It must be noted here that the State Government enacted the Madhya Pradesh Public Trusts Act, 1951 (for short, 'the Public Trusts Act'). On 26<sup>th</sup> May 1959, the Ministry of Home Affairs of the Government of India addressed a letter to the Maharaja, which refers to the settlement of Khasgi Property. By the said letter, the Central Government nominated one Shri S.V. Kanungo as its nominee. The letter records that Shri Kanungo was already a trustee nominated by the Central Government on two other family Trusts of the Holkar family. Before that, on 6<sup>th</sup> January 1959, by addressing a letter, the General Administration Department of the State Government informed the Private Secretary to the Maharaja that the State Government was proposing to nominate the Commissioner, Indore Division and the Superintending Engineer (B & R), Public Works Department, Indore Circle as the trustees. The State Government requested the Secretary to the Maharaja to communicate the concurrence of the Maharaja to the said nominations. By another letter dated 1<sup>st</sup> April 1959, the General Administration Department of Madhya Pradesh communicated to the Secretary to the Maharaja requesting him that representatives of the Ruler on the Trust be nominated. The letter records that the State Government has prepared a draft of the Trust Deed which will be finalised without any delay. The letter dated 14<sup>th</sup> November 1959 of the State Government addressed to the Secretary of Maharaja which is by way of reminder to the Maharaja to nominate his two representatives. The said letter also records that the draft of the Khasgi Trust Deed will be finalised and sent for approval of the Maharaja. The letter dated 14<sup>th</sup> April 1961 addressed by the State Government to the Secretary to Maharaja records that the draft of the Deed of Khasgi Trust is under examination and will be sent soon.

**5.** Ultimately, in terms of the draft provided by the State Government, the Deed of Trust of the Khasgi Trust (for short, "the Trust Deed") was executed on 27<sup>th</sup> June 1962

by and between Her Highness Maharani Usha Devi of Indore, the daughter and successor of Maharaja Yashwantrao Holkar, described therein as the Settlor, Shri K.A. Chitale, Senior Advocate and Shri S.C. Malhotra as the nominees of the Settlor and Shri S.V. Kanungo, the nominee of the President of India. The Trust Deed was also signed by the Commissioner, Indore Division and Superintending Engineer (B & R), Public Works Department, Indore who were nominated as trustees by the State Government. In the recitals, it is mentioned that the Trust was being created of the annuity of Rs.2,91,952/- in perpetuity for maintenance, upkeep and preservation of charities and religious endowments provided in the budget of the Holkar State for the year 1947-48 inclusive of the charities founded by Maharani Devi Ahilaya Bai Holkar. The said endowments were described in part 'A' of the Schedule. Further, it is provided that the Trust will be for the management and maintenance of the properties described as the Trust Properties, more particularly described in Part 'B' of the Schedule to the Deed of Trust. Part 'B' of the Schedule contains a list of a large number of properties in various States.

**6.** There was a notification issued by the State of Madhya Pradesh on 27<sup>th</sup> July 1962. It was mentioned therein that on the formation of the Madhya Bharat State, institutions, factories, religious places, chhatris, etc. fell under the supervision and management of the Commissioner, Pardon Office. It was further stated in the notification that the State Government while granting permission for the formation of the Khasgi Trust and the Alampur Trust (the Holkar Chhatris Trust), has granted recognition/approval to the transfer of the areas, and institutions etc. included in the Trust Deeds of the aforesaid Trusts. It is further mentioned that accordingly, the areas, institutions, factories, religious places, chhatris etc. were transferred to the respective Trusts on 16<sup>th</sup> July 1962. A report of making over and taking over charge of the properties described as the Alampur and Khasgi trust properties was recorded on 16<sup>th</sup> July 1962. For the sake of completion, it must be mentioned here that on 8<sup>th</sup> March 1972, a Supplementary Deed of Trust was executed by and between the Trustees for incorporating a clause that the Trustees have always had and shall have the power to alienate not only the income but any other item of the corpus of Trust Property for the necessity or for the benefit to the objects of the Trusts.

**7.** Alienations were made by the Trustees in relation to at least six properties. On 18<sup>th</sup> April 2012, a letter was addressed by Smt. Sumitra Mahajan, a Member of the Parliament to the Chief Minister of the Government of Madhya Pradesh. She contended in the said letter that the property mentioned in the Trust Deed was vesting in the erstwhile State of Madhya Bharat. It is mentioned that a valuable property shown in the Trust Deed at Haridwar was sold by the trustees without the permission of the Registrar under the Public Trusts Act. Therefore, she requested the Chief Minister to order an inquiry. Along with the notice dated 23<sup>rd</sup> May 2012, a copy of the said complaint was forwarded to the trustees of the Khasgi Trust by the Registrar of Public Trusts, District Indore. The Trustees replied on 20<sup>th</sup> June 2012 contending that the Public Trusts Act was not applicable to the Khasgi Trust and it is for the benefit of the Trust that the alienations have been made. Thereafter, the Collector of District Indore passed an order dated 5<sup>th</sup> November 2012 holding that the properties mentioned in the Trust Deed were the



properties of the State Government. He held that the trustees have made illegal alienations without prior permission from the Government. Therefore, the alienations were held to be invalid. Hence, the Collector directed that the name of the State Government be entered in revenue records/land records to prevent further alienations.

**8.** A Writ Petition being Writ Petition No. 11618 of 2012 was filed by the Khasgi Trust and its Trustee Shri S.C. Malhotra in the Madhya Pradesh High Court for challenging the aforesaid order dated 5<sup>th</sup> November 2012 passed by the Collector and praying for restraining the Collector from interfering with affairs of the Trust. The learned Single Judge disposed of the petition by the judgment and order dated 28<sup>th</sup> November 2013 by issuing diverse directions for the administration of the Khasgi Trust. The learned Single Judge directed that the Board of Trustees shall be reconstituted by including Smt. Sumitra Mahajan and two the persons as trustees. The State Government was directed to make a provision for payment of Rs.1 crore every year to the Khasgi Trust. Another writ petition (W.P. No. 5372 of 2010) filed by the Khasgi Trust was disposed of by the order dated 3<sup>rd</sup> December 2013 by the learned Single Judge directing the authorities to correct the revenue record in terms of the aforesaid order dated 28<sup>th</sup> November 2013. As stated earlier, both the said orders of the learned Single Judge were challenged by the State Government by filing two writ appeals. The Public Interest Litigation which was decided along with the writ appeals contained a prayer for directing inquiry through CBI regarding the affairs of the trust and in particular, regarding the alienations made by the Trustees.

**9.** Following are the important findings rendered by the Division Bench in the impugned judgment and order:

- (a) the Khasgi properties mentioned in Part 'B' of the Schedule to the Trust Deed continued to be vested in the State Government and therefore, the Trustees had no authority to alienate the same;
- (b) the subsequent modification of the Trust Deed made by the Trustees empowering them to alienate the properties described in Part "B" of the Trust Deed was illegal and was not binding on the State Government;
- (c) the alienations made by the Trustees were void;
- (d) the Khasgi Trust was governed by the Public Trusts Act; and
- (e) the learned Single Judge while deciding the writ petitions filed by the Khasgi Trust has virtually re-written the Trust Deed and therefore, his Judgment cannot be sustained.

In paragraphs 158 to 166 of the impugned judgment, the Division Bench issued following directions:

**"158.** This Court is not reproducing the entire report as the Covenants, Trust Deeds and the notification issued by the Government of India have already been reproduced in earlier paragraphs. Thus, it is wrong on the part of the respondent to say that the mechanical exercise was undertaken by the Collector based upon letter of Member of Parliament. With due application of mind, the State Government through Collector, Indore keeping in view the covenant, trust deed and the statutory provisions has taken action in the matter.

**159.** In the considered opinion of this Court, this Court does not have the power to draft the Trust Deed nor is having the power to enact the statute in respect of trust in question. However, as the properties which are under the ownership of State of Madhya Pradesh have been sold by the Trust/Trustees, a committee deserves to be constituted to ensure that the trust properties as per the schedule appended with the original trust deed are preserved, maintained and kept intact for the future generations to come.

**160.** The Committee so constituted shall inquire in respect of the properties sold by the Trust and shall take all possible steps to recover and retrieve any property or fund of the property, which have been sold or have been in unauthorized occupation or misappropriated.

For doing the aforesaid task, the State of Madhya Pradesh shall incur all the expenditures, in case there is paucity of fund in the accounts of the trust, especially in light of the fact that it is the State of Madhya Pradesh, who is having title over all properties.

**161.** The following Committee is constituted for the aforesaid work comprising of:—

- (a) Chief Secretary, State of Madhya Pradesh (Chairman);
- (b) Principal Secretary, Finance Department (Member);
- (c) Additional Chief Secretary, *Dharmaswa* Department (Member);
- (d) Commissioner, Indore Division, Indore (Member); (e) Collector, Indore (Secretary).

The State of Madhya Pradesh shall be free to proceed ahead in accordance with law.

**162.** In the connected writ petition i.e. W.P. No. 11234/2020, which is a Public Interest Litigation, a prayer has been made for issuance of an appropriate writ, order or directing a CBI inquiry. So far as the prayer with regard to directions for CBI inquiry is concerned, this Court is of the considered opinion that no such directions are required. **The allegation of misappropriation of Government properties and its disposal to favour someone and to cause loss to Public Exchequer, if at all, can very well be examined by Economic Investigation Wing of the State of Madhya Pradesh and accordingly, it is directed that the said Wing will thoroughly examine the matter and if it finds any criminality into the actions of any authority, it is expected that appropriate action should be taken by the said Wing. Hence, no positive direction to register a First Information Report is required.**

Resultantly, the Economic Offences Wing shall examine the matter and shall be free to proceed ahead in accordance with law.

**163.** The State of Madhya Pradesh is directed to take all possible steps to preserve the cultural heritage including the Ghats, Temples, Dharamshalas, which find place in the Trust property, being the titleholder of the property in question. The State of Madhya Pradesh shall also take appropriate action in accordance with law against all those persons, who have allegedly illegally sold the Trust's property from time to time.

**164.** In W.P. No. 11234/2020, the Union of India is already a party and Shri Milind Phadke has also been heard in the matter before delivering the judgment. He has also stated that the properties in question, on account of the covenant and the statutory notifications issued from time to time, are the exclusive properties of the State of Madhya Pradesh.

**165.** This Court on 23-4-2014 has directed the parties to maintain *status quo* and it has been informed by learned counsel for the State of Madhya Pradesh that some construction has taken place by the private parties.

**166.** Resultantly, the State of Madhya Pradesh is directed to take appropriate action in respect of the construction which has taken place over the Khasgi properties and shall restore it to its original position and the entire expenditure shall be borne by the State of Madhya Pradesh through Commissioner, Indore. The Collector, Haridwar shall assist the Divisional Commissioner, Indore in the matter and the Divisional Commissioner, Indore shall ensure that Kusha Ghat as well as other properties are again, which are meant for public charities are made available to public at large. The aforesaid direction is not only in respect of present property but in respect of other properties also. The State of Madhya Pradesh shall ensure by taking appropriate steps in accordance with law that no further sale takes place in respect of such properties and they shall maintain the properties for the generations to come keeping in view their historic importance. The Collector, Indore shall be free to take action in accordance with law pursuant to the order passed by him dated 5-11-2012 and the Registrar shall also be free to take appropriate action in accordance with law pursuant to the order passed by him dated 30-11-2012.”

(emphasis added)

### **SUBMISSIONS ON BEHALF OF THE KHASGI TRUST**

**10.** The submissions have been made initially by Shri Mukul Rohatgi, Senior Advocate and thereafter, by Dr. A.M. Singhvi, Senior Advocate in Civil Appeals arising out of Special Leave Petition (C) No.12133 of 2020 and Special Leave Petition (C) No.12241-42 of 2020. The learned senior counsel appearing for the appellants urged that at the time of the merger of the erstwhile State of Indore with the newly formed State of Madhya Bharat, there were three categories of properties - (A) State Properties covered by Article VI(1)(c) and Article XII of the Covenant; (B) Private Properties of the Ruler of Indore; and (C) Charities and Trust Properties held by the family of the Ruler of Indore. The contention raised by the appellants is that the charities which were already dedicated to the public, could not lapse to the State Government. The main submission is that in the impugned order of the Collector dated 5<sup>th</sup> November 2012, there is an error committed by holding that the properties described in Part ‘B’ of the Schedule to the Trust Deed of the Khasgi Trust, were not the Trust Properties but, were the properties of the State. It was submitted that the properties mentioned in Part ‘B’ of the Schedule, are the properties vested in the Khasgi Trust, as can be seen from various clauses of the Trust Deed. It was submitted that the Supplementary Deed of Trust dated 8<sup>th</sup> March 1972 clearly confers a power on the Trustees to alienate the Trust properties mentioned in Part ‘B’ of the Schedule to the Trust Deed. The submission is that as the Khasgi Trust is a State-controlled Trust, in view of clause (a) of the sub-Section (1) of Section 36 of the Public Trusts Act, the provisions of the Public Trusts Act, are not applicable to it. The learned senior counsel relied upon a specific order passed in that behalf by the Registrar of Public Trusts. He submitted that there are as many as 246 properties listed in Part ‘B’ of the Schedule to the Trust Deed, out of which, only six have been transferred by the Trustees during the span of over sixty years. He submitted that apart from the fact that Section 14 of the Public Trusts Act is not applicable to the Khasgi Trust, the scope of Section 14 has been laid down by this Court in the case of *Parsi Zoroastrian Anjuman, Mhow v. Sub Divisional Officer/The Registrar of Public Trusts and Anr.*<sup>1</sup> He submitted that as the Public Trusts Act allows the Trustees to alienate the Trust

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<sup>1</sup> 2022 SCC Online SC 104

properties, the Registrar would be required to grant permission for alienation in view of sub-Section (2) of Section 14 of the Public Trusts Act.

**11.** The learned senior counsel would urge that for a period of over fifty years from the date of execution of the Trust Deed, the State Government never disputed the status of properties mentioned in Part 'B' of the Schedule to the Trust Deed as the properties of the Khasgi Trust. He submitted that only on the basis of a complaint dated 18<sup>th</sup> April 2012, made by a senior Member of

Parliament of the ruling party to the office of the Chief Minister, the Principal Secretary prepared an Inquiry Report dated 2<sup>nd</sup> November

2012. No notice of any such inquiry was served upon the Trustees. He pointed out that the said Inquiry Report dated 2<sup>nd</sup> November 2012 proceeds on the footing that the Trust properties are, in fact, the properties of the State Government. The Inquiry Report suggests that the possession of the Government properties should be taken over by the State Government. He pointed out that it is on the basis of this Inquiry Report that the impugned order dated 5<sup>th</sup> November 2012 was passed by the Collector unilaterally holding that the State Government was the owner of the properties described as the Trust properties in the Trust Deed. Apart from the fact that the Collector had no jurisdiction to adjudicate on the disputed question of title, even the elementary principles of natural justice have not been followed. He pointed out that a show cause notice was issued by the Registrar of the Public Trusts to the Khasgi Trust on the basis of the complaint made by the Member of Parliament. Though, the Trustees replied to the said show cause notice issued by the Registrar, the said reply has not been considered by the Collector while passing the impugned order dated 5<sup>th</sup> November 2012.

**12.** Inviting our attention to the findings recorded in the impugned judgment of the Division Bench, the learned senior counsel submitted that correspondence on record and the clauses in the Trust Deed have been completely overlooked by the Division Bench of the High Court of Madhya Pradesh. He pointed out that the Supplementary Deed of Trust was executed on 8<sup>th</sup> March 1972 by all the Trustees including the nominees of the State Government as well as of the Central Government. Though the said Supplementary Deed was not challenged specifically, the Division Bench has gone into the issue of legality thereof. As regards the sale of the property known as Holkar Bada at Haridwar, he pointed out that the Bada which consists of only residential premises, has been sold under four separate Sale Deeds, but the adjacent Kusha Ghat has not been sold by the Trustees. The Bada property sold by the Trustees was encroached upon. There is a resolution of the Board of Trustees authorising the sale of the said property to which all the Trustees are parties. He pointed out that the constituted Attorney appointed by the Trustees may be related to the purchasers, but the purchasers are not at all related to any of the Trustees. He submitted that the entire sale proceeds have been deposited in the corpus of the Trust. Moreover, the Sale Deeds executed by the Trustees in the year 2009, were never challenged by the beneficiaries or any other person till 2012, when the Member of Parliament raised an objection to the said transactions. If according to the Authorities, the Trustees had violated the provisions of the Public Trusts Act, assuming the same were applicable, the Registrar could have invoked his powers under Chapter V of the Public Trusts Act. He submitted that the



impugned order dated 5<sup>th</sup> November 2012 was passed by the Collector behind the back of the Trustees. Moreover, the Collector had no jurisdiction to make an adjudication on the question whether the Trustees have violated any provision of law. He submitted that the order of the Collector is without jurisdiction. In any case, in view of the order dated 10<sup>th</sup> August 1971 passed by the Registrar of Public Trust, Indore, the provisions of the Public Trusts Act are not applicable to the Khasgi Trust. He pointed out that each and every alienation has been made pursuant to the resolutions passed by the Trustees which included the Government nominees.

**13.** The learned senior counsel submitted that when the Trustees have acted within the four corners of the Trust Deed as well as the Supplementary Trust Deed, criminal intention cannot be attributed to them. There is a complete absence of *mens rea*. He submitted that before making the first alienation in respect of a garden, the Trustees approached the State Government for sanction. The Chief Secretary of the State by communication dated 13<sup>th</sup> June 1969, clearly took a stand that the sanction of the Government for making alienation was not required. He submitted that the three nominees of the Governments are parties to the decision taken by the Board of Trustees to alienate the properties. He urged that the Trustees acted in a *bona fide* manner and therefore, in the year 2020, the High Court ought not to have ordered inquiry through the Economic Offences Wing of the State Government especially when the transactions concerning Holkar Bada were of 2009. He submitted that even the learned Single Judge while deciding the writ petition filed by the Trustees, had exceeded the jurisdiction vested in him and directed substantial modifications to be made to the Trust Deed. He submitted that on all counts, the impugned order of the Collector dated 5<sup>th</sup> November 2012, deserved to be set aside by allowing the writ petition.

#### **SUBMISSIONS OF THE APPELLANT IN CIVIL APPEAL FILED BY THE PURCHASER**

**14.** Civil Appeal arising out of Special Leave Petition (C) Diary No.22151 of 2020 has been filed by the purchaser of Holkar Bada. Shri P. S. Patwalia, the learned senior counsel firstly submitted that by the impugned judgment, the High Court has declared that the Sale Deeds executed in favour of the appellant, were void, though, the appellant-purchaser was not a party to the writ petition before the learned Single Judge and to the Appeals before the Division Bench. Moreover, after eleven years of the execution of the Sale Deeds, the High Court found fault with the same. He submitted that the appellant are *bona fide* purchaser. He submitted that one Mr. Vijay Singh Pal filed a Public Interest Litigation before the High Court of Uttarakhand, seeking an inquiry through the Central Bureau of Investigation into the sale transactions and the said writ petition/PIL was dismissed by the order dated 24<sup>th</sup> May 2018. The High Court held that the petitioner therein had not challenged the Sale Deeds by approaching the Civil Courts. The learned senior counsel pointed out that the said order was confirmed by this Court. He submitted that the appellant has been harassed and blackmailed by the said Mr. Vijay Singh Pal. Therefore, a suit for injunction was filed by the appellant/purchaser against him, which was decreed by the Civil Court. He submitted that to the Public Interest Litigation decided by the impugned judgment, the appellant/purchaser was not a party and moreover, the same was belatedly filed in the year 2020. He submitted that the Sale Deeds, under which Holkar Bada was sold, were not challenged in any proceedings before any

competent Court. He submitted that the appellant has not purchased Kusha Ghat and he is the purchaser of only the property known as Holkar Bada.

**15.** He also invited our attention to the resolution passed by the Board of Trustees on 5<sup>th</sup> June 2008, approving the sale transaction. He submitted that there is no material to show that the sale transaction was made at a price which was less than the prevailing market value. He stated that the old tenants had encroached upon the said property and their presence on the property has been noted in the revenue records.

### **SUBMISSIONS ON THE INTERVENTION APPLICATIONS**

**16.** Shri Prashant Bhushan, the learned counsel appearing for the applicant/intervenor in I.A.No.124266 of 2020, filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020, has made detailed submissions. He submitted that the dispute regarding the title claimed by a Maharaja of Indore was resolved in terms of Article XII of the Covenant by Shri V. P. Menon nominated by the Central Government. By a letter dated 6<sup>th</sup> May 1949, he settled the claim of Maharaja in respect of the Khasgi properties by holding that the same shall be treated as transferred to the State Government. He submitted that in the same order, a Trust was proposed to be constituted for maintenance, upkeep and preservation of the charities including the Khasgi properties vested in the State Government. He submitted that apart from the fact that the Trustees had no authority to sell the property described in Part 'B' of the Schedule to the Trust Deed, the documents on record show that the Trust was getting good income and therefore, there was no necessity of selling the said property known as Holkar Bada. He pointed out that on 23<sup>rd</sup> August 2007, a resolution was passed by the Board of Trustees to authorize Shri S. C. Malhotra, a Trustee to give a power of attorney to the concerned employee/person, only for the purpose of looking after the legal and other matters of the Trust as well as the property of the Trust. The resolution did not authorize Shri S. C. Malhotra to execute a power of attorney, authorizing the attorney to sell or dispose of the property. However, Shri S. C. Malhotra fraudulently executed a power of attorney in favour of one Mr. Raghvendra Sharma, authorizing him to sell the property having an area of 13370 sq.ft. at Kusha Ghat, Haridwar. Shri S. C. Malhotra had no authority to execute such a power of attorney. Similarly, Mr. Kanwaljit Singh Rathore claiming to be the Secretary of the Khasgi Trust executed a similar power of attorney in favour of said Mr. Raghvendra. On the basis of the said power of attorney, Mr. Raghvendra executed four separate Sale Deeds in favour of his own brother Mr. Aniruddh Kumar. In one of the four Sale Deeds, even Mr. Raghvendra's wife is shown as a purchaser along with Mr. Aniruddh. He would, therefore, submit that a fraud has been played by the Trustees. He relied upon various decisions in support of his contention that the Sale Deeds executed in favour of said Mr. Aniruddh, are illegal and void. He submitted that on the basis of the complaint filed by a Member of Parliament, a detailed inquiry was conducted by the Principal Secretary. He pointed out that only on the basis of the findings recorded in the said inquiry that the impugned order has been passed by the Collector.

**17.** Shri P.S. Patwalia, the learned senior counsel appearing for the purchaser has raised a strong objection to the locus of the applicant – Mr. Ved Prakash Pal, represented by Mr. Prashant Bhushan by relying upon various documents annexed to the counter affidavit. He pointed out that the applicant – Mr. Ved Prakash Pal has been set up by Mr

Vijay Singh Pal, who unsuccessfully filed a Public Interest Litigation before the Uttarakhand High Court, which was finally rejected. He submitted that in one of the complaints filed by the intervenor – Mr. Ved Prakash Pal before the District Magistrate in April 2019, he has given the cell phone number of the said Mr Vijay Singh Pal as his own. He relied upon several photographs and other documents to show that the applicant is a close associate of Mr Vijay Singh Pal, who was the petitioner in the Public Interest Litigation. He pointed out that the members of the syndicate led by Mr Vijay Singh Pal, have criminal antecedents. He pointed out several documents in this regard. He submitted that the I.A. for intervention filed by Mr Vijay Singh Pal has been dismissed by this Court by imposing costs of Rupees Twenty-Five Lakhs. He would, therefore, submit that the intervention application made by Mr. Prashant Bhushan deserves to be dismissed with exemplary costs.

**18.** The learned senior counsel appearing for the applicant – Richard Holkar in I.A. No.74790 of 2021 filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020, submitted that the property known as ‘Maheshwar Wada’ was accepted as a private property of Maharaja Yashwant Rao Holkar by communication dated 7<sup>th</sup> May 1949. His submission is that the lease granted to the applicant in respect of the said property cannot be interfered with. He submitted that before executing the transaction with him, the Trustees had applied for a permission under Section 14 of the Public Trusts Act. He submitted that in any case, the applicant was not impleaded as a party in the proceedings before the High Court and therefore, the High Court could not have dealt with the issue of the legality of the transactions in favour of the applicant.

**19.** The learned counsel appearing for the intervenors/ applicants in I.A. No.7103 of 2020 filed in Civil Appeal arising out of Special Leave Petition (C) No. 12133 of 2020 submitted that for managing the property subject matter of the Trust Deed, a High-Level National Committee should be constituted. He submitted that the annuity of Rs.2,91,952/- granted to the Khasgi Trust, is inadequate and the State must substantially increase the same.

### **SUBMISSIONS ON BEHALF OF THE STATE OF MADHYA PRADESH**

**20.** Shri Balbir Singh, the learned Additional Solicitor General of India submitted that only one Trustee of the Khasgi Trust Shri S. C. Malhotra had filed the two writ petitions subject matter of these Civil Appeals and therefore, the same were not maintainable. He had no authority to represent the Khasgi Trust to the exclusion of the other Trustees. He submitted that the property subject matter of Part ‘B’ of the Schedule to the Trust Deed was treated as lapsed in favour of the erstwhile Madhya Bharat Government. The Trust Deed clearly recites that the Trustees were authorized only to maintain and preserve the said properties. He pointed out that in the written statement filed by the Trustees in Civil Suit No.15 of 1973 as well as in the writ petition filed by them before the High Court, it is admitted that the Khasgi property subject matter of the Trust Deed had lapsed in favour of the State Government. He submitted that the correspondence exchanged between the Maharaja and the Government of India constitutes a treaty or agreement within the meaning of Article 363 of the Constitution of India. Therefore, all disputes arising on the basis of the same are required to be adjudicated by this Court. He submitted that in terms of the adjudication made in accordance with Article XII of the Covenant, the Khasgi

properties vested in the State Government and thereafter, the State Government was not divested of the said properties. He submitted that what is mentioned in the letter dated 13<sup>th</sup> June 1969 issued by the then Chief Secretary, is contrary to law and therefore, not binding on the State Government. He submitted that the Khasgi Trust is a public trust, which is governed by the Public Trusts Act. He submitted that as the Khasgi Trust cannot be said to be under the control of the State Government, exemption under Clause (a) of sub-Section (1) of Section 36 of the Public Trusts Act, was not applicable. Though the constraints imposed by Section 14 of the Public Trusts Act were applicable to all the alienations made by the Trust, prior consent of the Registrar under Section 14 was not obtained.

**21.** It is pointed out by him that on 28<sup>th</sup> July 2007, the land appended to Ganpati Mandir admeasuring 1800 sq.ft. was given on annual lease for thirty years for a meagre rent amount of Rs.720/- per year. As the Khasgi property, which even according to the case of the appellant was a Trust property was illegally sold, an inquiry by the Economic Offences Wing has been rightly ordered. He would, therefore, submit that no interference is called for with the impugned judgment.

### **BROAD QUESTIONS FOR CONSIDERATION**

**22.** After considering the submissions made across the Bar, broadly the following main questions arise for our consideration:-

- a. Whether the properties incorporated in Part 'B' of the Schedule to the Trust Deed are the properties of the Khasgi Trust?
- b. Whether the Khasgi Trust is a Public Trust within the meaning of the Madhya Pradesh Public Trusts Act, 1951 and whether its provisions are applicable to the Trust?
- c. Whether the Supplementary Trust Deed dated 08<sup>th</sup> May 1972 is legal and valid?
- d. Whether the Trustees of the Khasgi Trust were under an obligation to obtain the previous sanction of the Registrar in accordance with Section 14 of the Public Trusts Act, 1951 for alienating the Trust property?
- e. Whether the Division Bench of the High Court was right in holding that the impugned order dated 5<sup>th</sup> November 2012 passed by the Collector was lawful and correct?
- f. Whether the High Court was justified in directing the investigation into the allegations of misappropriation against the Trustees by the Economic Offences Wing of the State Government? and
- g. Whether the writ petitions filed by only one Trustee of the Khasgi Trust before the learned Single Judge were maintainable?

### **THE STATUS OF THE PROPERTIES IN PART 'B' OF THE SCHEDULE TO THE TRUST DEED** (Question – a)

**23.** Perusal of the Trust Deed shows that 246 immovable properties are listed in Part 'B' of its Schedule. In one of the recitals of the Trust Deed, the properties in Part 'B' have been described as "the Trust Properties". It is necessary to consider the relevant



provisions of the Covenant to which the Maharaja is a party. Article XII of the Covenant reads thus:

“(1) The Ruler of each Covenanting State 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 his making over the administration of that State to Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the first day of August 1948 an inventory of all the immovable properties, securities and cash balance 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 Ruler or State property it shall be referred to such person as the Government of India may nominate, in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be referable after the first day of July 1949.”

**24.** It appears that the Maharaja made an inventory of all the immovable properties, securities and cash balance held by him. The Maharaja made claims in terms of clause (3) of Article XII. Shri V.P. Menon, the Secretary to the Government of India was nominated by the Government of India to make an adjudication on the dispute in terms of clause (3) of Article XII. By the letter dated 6<sup>th</sup> May 1949 addressed by Shri V.P. Menon, the Maharaja was informed that the inventory of private properties of Maharaja submitted pursuant to Article XII has been approved and accepted. It is mentioned in the said letter that Annexure ‘A’ contains a list of properties which are approved as private properties of the Maharaja. Annexure ‘A’ contains several properties. Admittedly, none of these properties has been included in Part ‘B’ of Schedule to the Trust Deed. Shri V.P. Menon addressed another letter dated 7<sup>th</sup> May 1949 to the Maharaja informing him that the claim submitted by him in respect of the Khasgi properties in the inventory has been also settled as per the enclosure to the said letter. The enclosure to the said letter is very relevant which reads thus:

“His Highness Maharaja Yashwant Rao Holkar, Maharaja of Indore, Indore

**Settlement of the claim made by His Highness Maharaja Yashwant Rao Holkar of Indore concerning Khasgi**

**The Khasgi properties and the income from Khasgi shall be treated as 'lapsed' for all time to the Madhya Bharat Government. In lieu thereof the following guarantees are given subject to the conditions mentioned below:-**

(1) The Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety-one thousand nine hundred and fifty-two only), being the amount provided in the Holker State budget of 1947-48 for charities. This amount shall be funded and **put under a permanent Trust for the said charities** including the charities of Her Highness Mahar Ahilya Bai Holkar.

The Trust shall consist of the following:

1. Ruler of Indore who will always be the President of the Trust.
2. Two nominees of the Ruler.
3. One nominee of the Government of India.
4. Two nominees of the Madhya Bharat Government.

Note: **The trustees nominated by the Government of India and the Madhya Bharat Government shall be so appointed in consultation with the Ruler.**

**The powers and functions of the Trust shall be subject to such legislation as the Central or Madhya Bharat Government may enact generally for purposes of regulating such trusts, except that the composition of the Trust and the manner of its formation as stated above shall not be liable to any modification or change by such legislation."**

(emphasis added)

**25.** Thus, the Government of India held that the Khasgi properties and the income from Khasgi should be treated as lapsed for all time to the Madhya Bharat Government. This shows that the claim made by the Maharaja in respect of the Khasgi properties was not accepted and that a decision was taken that the said properties shall vest in the State Government. In lieu thereof, certain guarantees were given by the Government of India, which included that an autonomous Trust would be created for the said charities (the Khasgi properties and the charities of Maharani Ahilyadevi Holkar). The Trust was to be headed by the Ruler of Indore as its President. Out of five other Trustees, two were to be the nominees of the Ruler, two were to be the nominees of the State Government, and one was to be the nominee of the Government of India. The government nominees were to be appointed after consultation with the Ruler. The powers and functions of the Trust were made subject to the State or Central legislation, which may be enacted in future. However, it was clarified that the legislation shall not change the manner of formation of the autonomous Trust and the composition of the Trust.

**26.** Apart from the rejection of the claim by the Maharaja in respect of the Khasgi properties, the Trustees have accepted time and again that by virtue of the settlement of the dispute in accordance with clause (3) of Article XII of the Covenant, the State Government became the owner of the Khasgi properties. Suit No. 15 of 1975 was filed by a member of the Holkar family to which the Khasgi Trust as well as other two Trusts of Holkar family were party defendants. A written statement was filed by the Khasgi Trust in the said suit. Paragraph 6 of the said written statement is material, which reads thus:

"6. Reply to para 6:

It is admitted that the property descended to His late Highness on succession from his predecessor Ruler of Holkar Dynasty and recognition by Paramount Power. The property comprised of the Kingdom Malharrao extension acquired by Shrimant Holkar and further and addition Subhedar acquisition, by successive Rulers, including His late Highness. **The property bestowed on Maharani Gautamabai Holkar at the instance of her husband Subhedar Malharrao was held and managed separately by or on behalf of the consent of the Ruler and was called the "Khasgi" property, Devi Ahilyabai created public religious and charitable endowment from her resources and in the year 1904 the Khasgi property came to be administered by the Holkar State. In the integration of the administration under the Covenant entered into by the Rulers of the States of Central India, the administration of the property settled for public charitable and religious endowments founded by Devi Ahilyabai also passed to the United State of Madhya Bharat, a provision having been made that the endowments would be administered subject to any directions or instructions that may from time to time be given by the Government of India.** The properties had been settled as a foundation for funds for charity. These properties lapsed to the State and cash grant in lieu thereof was made. The Khasgi (Devi Ahilyabai Holkar Charities) Trust was constituted under the appropriate directions of the Government of India to administer this Trust fund and the charities. The Registrar of Public Trusts

has upheld the Trust as a Public Trust administered by an agency acting under the control of the State. Annexed herewith is a copy of the relevant order and marked 'B'."

(emphasis added)

**27.** Paragraphs 29.2 and 29.3 are also relevant, which read thus:-

**"29.2 As stated above, the list of Private Properties settled in 1948 under the Covenant excluded the endowments which were eventually transferred to the Khasgi (Devi Ahilyabai Holkar Charities) Trust and Alampur (Subhedar Malharrao Holkar Chhatri) Trust. These endowments vested in the United State of Madhya Bharat till 1950, then in the Part 5 State of Madhya Bharat till 1956 and thereafter in the reorganized State of Madhya Pradesh until the year 1962 when the two Trusts were created under the obligation to do so. Article VI:(2) (c) of the Covenant recognised the necessary of the Successor State providing for management of the religious, charitable and historical endowments and keeping them separate from the Private Properties.**

**29.3 The defendants say that the properties which eventually vested in these two Trusts were not Private Properties of His late Highness.** They did not vest in His late Highness either before or after 1940 either as personal or joint family properties. Alternatively, they were either State Props or properties which vested in the United State of Madhya Bharat under Article 47 of the Covenant."

(emphasis added)

Again in paragraph 29.4, it is stated thus:

**"29.4 This vesting in three successive Governments referred to above and the handing over of the property by the Government of Madhya Pradesh to the defendant No.1 for the purposes of creation of trusts under the Covenant were acts of State which cannot be challenged by the Plaintiff in municipal courts."**

(emphasis added)

**28.** Even in the writ petition filed by the Khasgi Trust out of which the present Civil Appeals arise, a specific stand was taken in Paragraph 5.1 that the Khasgi Properties were charities and religious endowments of the family of Rulers of Indore. A stand was taken that the Khasgi properties held by Holkar rulers vested in the State Government which were restored to the Trust created for that purpose. The relevant part of paragraph 5.1 reads thus:

**"5.1. The petitioner is a religious and charitable Trust duly constituted on 27.06.1962 by a registered instrument. A copy of the Trust Deed is annexed hereto marked ANNEXURE P-2. However, the history of the Trust and its activities can be traced to the Holkar rulers who had founded and ruled Holkar State at Indore from 1761 A.D. to 1948 A.D. when the said State (i.e. Holkar State) joined the Union of India by first merging itself into a Part B State by the name of Madhya Bharat. Right from the lime of establishment of their rule, the Holkar rulers, particularly the legendary Devi Ahilya Bai Holkar being of an extra-ordinary and unprecedented religious and charitable disposition, generously established charities and religious endowments spread all over the country including in their own State. Since the said charities and religious endowments were managed and looked after personally by the Rulers and their Queens, the same came to be called "Khasgi" or 'personal' charities and religious endowments. However, since during those days there was little or no distinction between 'State' and 'personal' charities and religious endowments, the funds for the upkeep and management of the said charities and religious endowments were provided by the State and a budgetary provision was accordingly, made therefor. Historically, therefore, the charities and religious endowments came to be regarded as a different and third species of property, as distinguished from the State properties and/ or personal properties of the Rulers of Holkar State."**

**29.** Paragraph 5.2 is also material, which reads thus:-

“5.2 The above nature of the charities and religious endowments of the Trust is also clear from the recitals of the Trust Deed, particularly, clauses (3), (5), (12), (15) and (17) therein. (Kindly see ANNEXURE P-2). It is, therefore, apparent that the Holkar rulers acquired properties in many religious places throughout the country and established several temples, dharamshalas, ghats etc. and dedicated the same for public use. However, there were apparently several properties which could not be put to such use, but which continued to be owned and managed as Khasgi properties. Ultimately, when the Trust was established in 1962, all such properties, including the temples, dharamshalas, ghats etc, which formed part of the Khasgi properties, were vested in and handed over to the petitioner Trust as per the list/ schedule to the Trust Deed. **It also appears that the petitioner Trust was created with the active support, participation and approval of the State government as the latter's Muafi Department, which had been looking after the Khasgi properties after the merger of the Holkar State with Madhya Bharat, was apparently finding it difficult to manage the numerous and far flung Khasgi properties in the nominal budget grant of about Rs.2.91 lacs.** The properties were apparently in danger of being wasted or being encroached upon and what was worse still, was the fact that the charities and religious endowments were in danger of losing their historical identity and importance, both which were closely associated with the erstwhile Holkar Rulers. **Therefore, in the above historical background, the State Government in its wisdom decided to restore the Khasgi properties to the erstwhile Holkar Rulers by getting them to create the petitioner Trust which was the vehicle used for entrusting the Khasgi properties to them.** However, the petitioner Trust could come into existence only after the demise of late Maharaja Yeshwant Rao Holkar though the process had begun much earlier during his lifetime.”

(emphasis added)

**30.** On 23<sup>rd</sup> June 1969, an application was made by the Trustees of Khasgi properties to the Registrar seeking a declaration regarding exemption under clause (a) of sub-Section (1) of Section 36 of the Public Trusts Act. In paragraph 6 of the said application, the Trustees stated that the charities and religious endowments were initially under the management of the erstwhile Holkar State. They further stated that after the merger of Holkar State with the State of Madhya Bharat, the management and possession of the charities and religious endowments remained with the State Government and its successors till 16<sup>th</sup> July 1962, when the same was handed over to the Trustees. The stand consistently taken by the Trustees of the Khasgi Trust clearly shows that it is an accepted position that the properties described in Part 'B' of the Schedule to the Trust Deed vested in the State Government after the adjudication was made in accordance with Clause (3) of the Article XII. It must be noted here that the Maharaja or none of his family members challenged the said adjudication made on the issue of ownership of the Khasgi properties and none of them disputed or challenged the act of the State Government of taking over the Khasgi properties/charities. In fact, the Maharaja acted upon it by nominating two trustees. The Khasgi Trust has been created on the basis of the said adjudication. Hence, the Trustees are bound by the adjudication.

**31.** Thus, as a result of adjudication made in accordance with clause (3) of Article XII of the Covenant, the Khasgi properties which are listed in Part 'B' of the Schedule to the Trust Deed vested in the State Government.

**32.** On 6<sup>th</sup> January 1959, the Under Secretary to the Government of Madhya Pradesh wrote to the Private Secretary of Maharaja that the State Government proposes to



nominate the Commissioner, Indore Division and the Superintending Engineer (B&R), P.W.D., Indore Circle as their nominees to the Trust to be constituted as per the enclosure to the letter dated 06<sup>th</sup> May 1949 addressed by Shri V.P. Menon. Therefore, a request was made to convey to the State Government whether the Maharaja had accepted their nominations. The letter records that after receiving the reply from the Maharaja, the draft of the Trust Deed would be finalised. By the letter dated 1<sup>st</sup> April 1959, the Deputy Secretary to the State Government requested the Private Secretary of the Maharaja of Indore to make nominations of two persons for being appointed as Trustees. A request was made to make nominations immediately so that the State Government could finalise the draft of the Trust Deed. The letter dated 14<sup>th</sup> November 1959 addressed by the Under Secretary to the State Government to the Secretary to Maharaja reiterates that after the Maharaja confirms the nominations, the Trust Deed will be finalised. By the letter dated 14<sup>th</sup> April 1961, the Under Secretary to the Government of Madhya Pradesh informed the Personal Assistant to the Maharaja that the draft deed of the Khasgi Trust was still under consideration and would be sent as soon as it was finalised. These contemporaneous documents establish that the State Government prepared the draft of the Trust Deed in terms of which the Trust Deed dated 27<sup>th</sup> June 1962 was executed. As the Khasgi Trust was created on the basis of the decision in terms of clause (3) of Article XII of the Covenant, the draft of the Trust Deed was made by the State Government. One of the recitals refers to the properties in Part 'B' of the Schedule as the Trust properties. Various clauses of the Trust Deed refer to the fact that the Khasgi properties, which vested in the State Government, became the Trust property of the Khasgi Trust. The recitals and clauses in the Trust Deed are very relevant as the Trust Deed was drafted by the State Government. Clauses 3 and 5 are material which read thus:

“3. The Settlor hereby transfers the Trust properties to **the trustees who shall hold the same upon trust and shall be responsible for the maintenance, upkeep and preservation of the said Charities and Religious Endowments.**

xxx xxx xxx

5. The Trustees shall hold and possess the Trust properties and shall have the power to manage the said properties and collect all sums of money by way of rent, profit, interest and any other income accruing to the Trust.”

(emphasis added)

Even Clause 7 of the Trust Deed again refers to maintenance, upkeep and preservation of the Trust properties, which reads thus:-

“(7). The Trustees shall prepare the Budget estimates of the Trust every year and shall apply the income for the fulfilment of the objects of the Trust as referred to in paragraph 2 of the preamble of this Deed and **for the maintenance, upkeep and preservation of the Trust Properties in good condition** and shall make necessary repairs thereto and the balance, if any, shall be held and accumulated for being applied in the fulfilment of the aforesaid objects of the Trust and for purposes set out in clause (14) hereunder.”

(emphasis added)

**33.** Under the report dated 16<sup>th</sup> July 1962, Muafi Officer of the State Government handed over the possession of properties of the Khasgi Trust as well as of the Alampur

Trust to the Secretary of the Trusts. In terms of the handing over of the properties as aforesaid, a notification was issued by the State Government on 27<sup>th</sup> July 1962. English translation of the said notification reads thus:-

“STATE OF MADHYA PRADESH DATED 27.07.1962  
COMMUNIQUE FOR COMMISSIONERS AND DISTRICT CHAIRMANS  
OFFICE OF COMMISSIONER, INDORE DIVISION.  
INDORE  
(PARDON SECTION)

Owing to the formation of Madhya Bharat, Areas, Institutions, Factories, "Chhatris", Religious Places etc. of Agreement Executor former State Indore fell under the supervision and management of Commissioner, Pardon Office. **Now, in relation to these properties, Government while granting permission for formation two Trusts, one Khasgi Trust (The Maharani Ahilyabai Charities Trust) and second Alampur Trust (The Holkar Chhatris Trust), has granted recognition to transfer of the areas, institutions etc. included in the trust deed to the aforesaid trusts. Accordingly, all the Areas, Institutions, Factories, "Chhatris", Religious Places etc., in connection with the trust were transferred to them on 16.07.1962.** Hence, for the information of all government offices and general public, this communiqué has been published.

(2273) M. P. Shrivastava, Commissioner”

(emphasis added)

Thus, the properties described in Part ‘B’ of the schedule to the Trust Deed which were vested in the State Government were transferred to the autonomous Khasgi Trust on its incorporation. In fact, till 2012, the State Government never disputed that the Khasgi properties listed in Part ‘B’ of the Schedule to the Trust Deed were the Trust properties of the Khasgi Trust. Therefore, to that extent, the Division Bench of the High Court is not right when it concluded that the properties incorporated in Part ‘B’ of the Schedule to the Trust Deed continue to be the Government properties even after 16<sup>th</sup> July 1962. The said properties are vesting in the Khasgi Trust.

**APPLICABILITY OF THE PROVISIONS OF THE PUBLIC TRUSTS ACT** (Question – b)

**34.** The second issue to be decided is whether the provisions of the Public Trusts Act apply to the Khasgi Trust. We have already quoted the enclosure to the letter dated 6<sup>th</sup> May 1949, issued by Shri V. P. Menon. The enclosure incorporates the decision of the Government of India on the claim made by the Maharaja about the Khasgi properties. It specifically records that the powers and functions of the Khasgi Trust shall be subject to such legislation as the Central Government or Madhya Bharat Government may enact generally for the purposes of regulating such Trusts. It is in this context that we will have to examine the provisions of the Public Trusts Act, which was enacted in the year 1951. Subsection (4) of Section 2 defines a Public Trust, which reads thus:-

“2. Definitions. – In this Act, unless there is anything repugnant in the subject or context,–

(1).....;

(2).....;

(3).....;

(4) "public trust" means an express or constructive trust for a public, religious or charitable purposes and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose;

(5).....;

.....”

**35.** Coming back to the Trust Deed, the object of the Trust is to maintain up-keep and preserve the Trust properties and the charities as well as religious endowments. Part ‘A’ of Schedule to the Trust Deed contains details about the endowments to various places of religion, such as, temples, anna chattras, peersthans, donations to dharmshalas and chhatris. Some of the properties in Part ‘B’ of the Schedule are temples and religious places. The trust was created with the object of preservation and maintenance of the Trust properties which are charities and endowments. Thus, it can be said that the Khasgi Trust, is an express Trust for public, religious and charitable purposes. Under Section 4(1) of the Public Trusts Act, every such Trust requires compulsory registration.

**36.** The Trustees in support of their appeals relied upon the order dated 10<sup>th</sup> August 1971, passed by the Registrar of Public Trusts, holding that the Khasgi Trust was entitled to exemption under Clause (a) of Sub-Section (1) of Section 36 of the Public Trusts Act. Paragraph 3 of the said order reads thus:-

“3 Out of five members of the Management Committee of Khasgi (Devi Ahilyabai Holkar Charities) Trust are nominated by the State Government and Central Government. In such circumstances, control of the State Government on this Trust is evidently clear. Even the savings of the Trust could be spent only with the prior permission of the State Government in accordance with the Section 14 of the Trust Deed. It is clear from it that State Government is in full control of the present Trust and it is eligible for the exemption from registration. I believe that the Objection raised by the Secretary of the Trust is valid and appropriate. Thus, proceedings of the registration are concluded.”

**37.** It is, therefore, necessary to consider the ambit of Section 36. For the sake of convenience, we are reproducing Section 36, which reads thus:-

“36. Exemption.–

**(1) Nothing contained in this Act shall apply to– (a) a public trust administered by any agency acting under the control of the State or by any local authority,**

(b) a public trust administered under any enactment for the time being in force, and (c) a public trust to which the Muslim Wakfs Act, 1954 (29 of 1954) applies.

**(2)** The State Government may exempt by notification, specifying the reasons for such exemption in the said notification, any public trust or class of public trusts from all or any of the provisions of this Act subject to such conditions, if any, as the State Government may deem fit to impose.”

(emphasis added)

**38.** The order of the Registrar proceeds on the footing that even if Clause (a) of Sub-Section (1) of Section 36 is applicable, Section 14 of the Public Trusts Act will apply. Obviously, if Clause (a) is attracted, nothing contained in the Public Trusts Act shall apply to such a Trust, which will include Section 14 as well. The powers of the Registrar under the Public Trusts Act are found in Chapter V. None of the provisions of the Public Trusts Act confer any power on the Registrar to decide the question whether an exemption

under Clause (a) of Sub-Section (1) of Section 36 is applicable to a particular public Trust. Therefore, we have independently examined whether Clause (a) of sub-Section (1) of Section 36 will have application. It is not the case that the Khasgi Trust is being administered by any local authority as such. The question is whether it is being administered by any agency acting under the control of the State Government. There are six Trustees of the Khasgi Trust, out of which, one is the Ruler, who is the ex-officio President. Two Trustees are the nominees of the Ruler. The remaining three are the nominees of the State Government and Central Government. Neither in the order of the Government of India dated 6<sup>th</sup> May 1949 nor in the Trust Deed, there is anything to indicate that the Khasgi Trust is administered by any agency acting under the control of the State Government. Even the power to nominate two Trustees vested in the State Government and similar power vested in the Central Government to nominate one Trustee has to be exercised in consultation with the Ruler. The three Trustees nominated by the Government do not have a majority in decision making. The State Government has no effective control over the functioning of the Khasgi Trust. In one sense, it is an autonomous public Trust. Therefore, on the face of it, Clause (a) of Sub-Section (1) of Section 36 has no application. The Khasgi Trust cannot claim to be covered under the excepted category in clause (a) of sub-section (1) of Section 36.

**39.** We may note here that the High Court has proceeded on the erroneous footing that as there was no notification issued under sub-Section (2) of Section 36, Clause (a) of Sub-Section (1) of Section 36 will not apply. Sub-Sections (1) and (2) of Section 36 operate in different fields. When sub-Section (1) is applicable to a Public Trust, none of the provisions of the Public Trusts Act is applicable to the Trust. Sub-Section (2) is an independent power of the State Government to issue a notification exempting certain Public Trusts from all or any of the provisions of the Public Trusts Act. Thus, we have no manner of doubt that the Khasgi Trust will be governed by the Public Trusts Act and that the same is required to be registered accordingly.

**VALIDITY OF THE SUPPLEMENTARY TRUST DEED (Question – c) AND OBLIGATION TO OBTAIN A PERMISSION UNDER SECTION 14 (Question – d)**

**40.** We may note here that owing to the order of the Registrar dated 10<sup>th</sup> August 1971, even the Trustees of the Khasgi Trust had reason to believe that though by virtue of Clause (a) of Sub-Section (1) of Section 36, the Trust was exempted from registration under the Public Trusts Act, Section 14 thereof was applicable. Section 14 reads thus :

“14. Previous sanction of Registrar, in cases of sale, etc., of property belonging to a public trust.-(1) Subject to the directions in the instrument of trust or any direction given under this or any other law by any court –

- (a) no sale, mortgage, exchange of gift of any immovable property; and
- (b) no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building; belonging to a public trust, shall be valid without the previous sanction of the Registrar.

(2) The Registrar shall not refuse his sanction in respect of any transaction specified in sub-section (1) unless such transition will, in his opinion, be prejudicial to the interests of the public trust.



An application was made by the Secretary of the Khasgi Trust on 21<sup>st</sup> August 1997 to the Registrar to grant permission under subSection (1) of Section 14 to sell the Trust property mentioned therein which was sold to the appellant in Civil Appeal arising out of Special Leave Petition (C) No. 19063 of 2021. By the order dated 16<sup>th</sup> October 1997, permission to alienate was accorded by the Registrar to the Trustees, subject to several conditions. One of the important conditions was that the property should be sold at the maximum price by inviting tenders and that the sale price should not be less than the market rate prevailing in the area where the property is situated. In any event, as the Public Trusts Act is applicable to the Khasgi Trust, the Trustees cannot alienate the Trust properties without complying with Section 14.

**41.** The Trustees relied upon the Supplementary Trust Deed dated 08<sup>th</sup> March 1972 for contending that they are empowered to alienate trust property without taking recourse to Section 14 of the Public Trusts Act. This document was not challenged in the proceedings before the High Court. But, the issue of legality thereof has been gone into by the High Court. As noted earlier, the Khasgi Trust has been created on the basis of the adjudication made under clause (3) of Article XII of the Covenant. The Khasgi properties vested in the State Government by virtue of the said adjudication. However, the Khasgi properties were transferred to the Khasgi Trust on its establishment. Therefore, we have already held that the Khasgi properties vested in the Khasgi Trust which is a public Trust under the Public Trusts Act. The Public Trusts Act itself permits the Trustees of a Public Trust to alienate the Trust Property subject to constraints imposed by Section 14. Therefore, the Supplementary Trust Deed which enables the Trustees to alienate the Trust Property cannot be illegal. However, alienation of the Trust property can be made only in accordance with Section 14. The Trustees by executing such a document cannot overcome the mandate of Section 14. Therefore, the power to alienate under the Supplementary Trust Deed is subject to the constraints imposed by Section 14 of the Public Trusts Act. To that extent, the Division Bench of the High Court was not right.

**42.** Before we discuss Section 14 of the Public Trusts Act, even if we assume that the exemption under Clause (a) of Sub-Section (1) of Section 36 was applicable to the Khasgi Trust, it must be noted that the Trustees held the property in a fiduciary capacity for the benefit of the beneficiaries, which in the present case are the members of the public as the Trust properties include a large number of temples, ghats, etc. The property of the Khasgi Trust could not have been sold without following a fair and transparent process. The view consistently taken by this Court, as regards the alienation of public property, right from the case of **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors.**<sup>2</sup>, will substantially apply to the alienation of the property of a public Trust and therefore, the Trustees are bound to dispose of the Trust property only for the benefit of the Trust or its beneficiaries, and not as a private venture. This can be achieved only by following a fair and transparent process. The process must be such that the Trust property fetches the best possible price. Only if alienations are made in such a manner, the same will be in the interests of the beneficiaries.

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<sup>2</sup> 2011 (5) SCC 29

**43.** As we have held that the provisions of the Public Trusts Act shall apply to the Khasgi Trust, now we are referring to the provisions of Section 14. Section 14 imposes an embargo on the sale, mortgage or gift of any immovable property of the Public Trust as well as lease for a period exceeding seven years in the case of agricultural lands, or for a period exceeding three years in case of a non-agricultural land or building. Such transactions shall not be valid without the previous sanction of the Registrar. Sub-Section (2) limits the power of the Registrar to refuse the sanction in respect of transactions covered by sub-Section (1). The Registrar can refuse sanction only when he is satisfied that the transactions will be prejudicial to the interests of the Public Trust.

**44.** In the case of *Parsi Zoroastrian Anjuman, Mhow*<sup>1</sup>, a Coordinate Bench of this Court had an occasion to deal with the scope of Section 14. The Co-ordinate Bench compared Section 14 with a similar provision of Section 36 under the Maharashtra Public Trusts Act, 1950, putting an embargo on the powers of the Trustees of a Public Trust of alienating the trust property. Paragraph 22 of the said judgment reads thus:

“22. As can be seen by Section 14(1), *previous sanction* of the Registrar of public trusts is a precondition, for the (a) “*sale, mortgage, exchange of gift of any immovable property*” or (b) “*lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building.*” If Section 14(1) had stopped there, the embargo on alienation of the types enumerated in the provision (sale, gift, exchange, mortgage etc., or long-term lease(s) of agricultural or nonagricultural properties) i.e., obtaining previous sanction, could well have meant that the Registrar's role was conceivably intrusive. **However, the provisions of Section 14(1) and the power conferred on the Registrar under it, are controlled by Section 14(2) which states that the Registrar “shall not refuse his sanction” unless in his opinion the alienation, or transfer is prejudicial to the interests of the public trust. The clear reference in Section 14(2) is to the power exercisable under Section 14(1). The controlling expression in Section 14(1) significantly, is that previous sanction in respect of the two situations (i.e., alluded in clauses (a) and (b)) is “subject to the directions in the instrument of trust or any direction given under this or any other law by any Court.”** This controlling or, rather opening words, clearly indicate that the grant or refusal of sanction by the Registrar have to be based on either “*the directions in the instrument of trust*”, or “*any direction given under this (i.e., M.P. Public Trusts Act) or any other law by any court*”. The discretion thus, is relatable to directions in the trust document, or any provision of the Act, or any other law as ordered (or directed) by any court. Therefore, the Registrar, is not empowered to read into it her own notions of what is beneficial and what is prejudicial to the trust. The refusal has to be specific to the requirement of law, wherever such law clearly stipulates so, or any specific provision of the trust document.”

(emphasis added)

This Court proceeded to permit the Trustees to alienate the Trust Property, subject to fresh valuation of the property and subject to selling the property to the highest bidder through a public tender.

**45.** Section 14 is applicable to immovable property of a Public Trust. Section 13 governs the investment of public trust money. The State's control of charities and religious endowments in some form is not foreign to our jurisprudence. A Public Trust invariably depends on charity done by individuals by donating immovable property or by making cash donations. Though in law, the assets and properties of a Public Trust vest in its Trustees, they hold the Trust property in a fiduciary capacity for the benefit of the

beneficiaries of the Trust. They hold the property for giving effect to the objects of the Public Trust. A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust. Therefore, the statutes dealing with the Public Trusts which are operating in various States, provide for limited control of the activities of a Public Trust. The control is exercised by providing for the submission of the annual accounts by the Trustees and filing of returns with the concerned charity organization or other authority under the law. There are statutory constraints on the power of the Trustees to alienate the property of a Public Charitable Trust. There are provisions in such statutes for penalizing the Trustees for misappropriation of the property of the Trust. Many such Statutes empower the authorities under the Statutes to remove a Trustee of a Public Trust, on account of misbehaviour or acts of misappropriation, etc. The Trustees are the custodians of Trust properties. The Trustees have a duty to safeguard the interests of the beneficiaries of the Public Trust. That is how, a provision in Public Trust Law, like Section 14 of the Public Trusts Act, is of importance. This provision seeks to protect the Trust property in the hands of the Trustees from unwarranted alienations. In the present case, the transactions of sale in favour of the appellant in Civil Appeal arising out of Special Leave Petition 19063 of 2021, have been effected admittedly without obtaining prior permission under Section 14. The Division Bench of the High Court has gone into the question whether the alienations were null and void. However, the purchasers were not parties to the proceedings before the High Court. Hence, final adjudication could not have been made on the issue of nullity of the alienations made by the Trustees of the Khasgi Trust in absence of the necessary parties. However, there is no manner of doubt that the alienations could not have been made without prior sanction of the Registrar.

### **POWERS OF THE REGISTRAR UNDER THE PUBLIC TRUSTS ACT.**

**46.** Under Chapter V of the Public Trusts Act, there are powers vested in the Registrar of controlling a Public Trust. Sections 17, 22 and 23 are material, which read thus:-

**“17. Auditor's duty to prepare balance sheet and to report irregularities, etc.** - (1) It shall be the duty of every auditor auditing the accounts of a public trust under Section 16 to prepare a balance sheet and income and expenditure account and to forward a copy of the same to the Registrar within whose jurisdiction a public trust has been registered.

(2) The auditor shall, in his report specify all cases of irregularities, illegal or improper expenditure or failure or omission to recover monies or other property belonging to the public trust or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

**22. Power of the Registrar.—The Registrar shall have powers,—**

**(a)** to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

**(b)** to call for or inspect any extract from any proceedings of the trustees of any public trust or any book or account in the possession of or under the control of the trustees;

**(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust:**

Provided that in entering upon any property belonging to the public trust the officer making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust.

**23.** Procedure after receipt of the report by the Registrar. – (1) If the report of the auditor made under section 17 shows, in the opinion of the Registrar, material defects in the administration of the public trust, the Registrar may require the working trustee to submit an explanation thereon within such period as he thinks fit.

(2) If on the consideration of the report of the auditor, the accounts and explanation, if any, furnished by the working trustee, **the Registrar is, after holding an inquiry in the prescribed manner and giving opportunity to the person concerned, satisfied that the trustees or any other person has been guilty of gross negligence, a breach of trust, misapplication or misconduct which has resulted in the loss to the public trust he shall determine–**

**(a) the amount of loss caused to the public trust;**

**(b) whether such loss was due to any breach of trust, misapplication, or misconduct on the part of any person;**

**(c) whether any of the trustees, or any other person is responsible for such loss;**

**(d) the amount which any of the trustees or any other person is liable to pay to the public trust for such loss.**

(3) **The amount surcharged on any trustee or other person in accordance with clause (d) of subsection (2) shall, subject to any order of the Court under section 24, be paid by the trustee or person surcharged within such time as the Registrar may fix.”**

(emphasis added)

The Registrar by exercising powers under Section 22 of the Public Trusts Act, can call for the record and report from the Trustees. If the report of the Auditor, submitted in accordance with Section 17, shows material defects in the administration of the Public Trust, the Registrar can always call upon the Trustees to submit an explanation. Under Sub-Section (2) of Section 23, the Registrar has power, after holding an inquiry in a prescribed manner, to decide whether Trustees have been guilty of any conduct which has resulted in any loss to the Public Trust. He is empowered to quantify the amount of loss caused to the Public Trust and also to decide the amount which any of the Trustees or any other person, is liable to pay to the Public Trust for compensating for such a loss. Section 24 provides for an appeal to the Court against an order made under Section 23. Section 31 of the Public Trusts Act provides that the amount determined in accordance with Sections 23 and 24, is recoverable as arrears of land revenue. In a given case, the Registrar can direct recovery from Trustees of an amount equivalent to the loss caused to the Trust due to illegal alienation of Trust property by the Trustees.

**47.** When a Trust property is transferred without prior sanction of the Registrar under Section 14 and/or without following a fair and transparent process, it can be always said that the Trust property is not being properly managed or administered. In such a case, apart from exercising the power under Section 23, the Registrar can make an application under sub-Section (1) of Section 26 inviting the attention of the Court to the

mismanagement of the Trust. Sections 26 and 27 are material in this behalf, which read thus: -

“**26.** Application to for directions.-**(1)** If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that, –

(a) the original object of the public trust has failed:

**(b) the trust property is not being properly managed or administered; or**

**(c) the direction of the court is necessary for the administration of the public trust; he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to court for directions within the time specified by the Registrar.**

**(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the court.**

**27.** Courts power to hear application- **(1)** On receipt of such application the court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate.

**(2) While exercising the power under sub-section (1) the court shall, among other powers, have power to make an order for:- (a) removing any trustee;**

**(b) appointing a new trustee;**

**(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;**

**(d) providing a scheme of management of the trust property; (e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;**

**(f) issuing any directions as the nature of the case may require.**

**(3)** Any order passed by the court under sub-section **(2)** shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court. **(4)** No suit relating to a public trust under section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any court on any matter in respect of which an application can be made under section 26.”

(emphasis added)

Under sub-Section **(2)** of Section 26, the Registrar can himself make an application to the Court seeking the exercise of powers under Section 27. On such an application being made and after holding an inquiry, the Court has the power to remove the Trustees of the Trust or to issue directions as provided in Section 27.

**48.** In the present case, all the alienations made by the Trustees of Khasgi Trust except alienation made in favour of the appellant in Civil Appeal arising out of Special Leave Petition (C) No.19063 of 2021, have been made without complying with the mandatory requirement of obtaining the previous sanction as required by subSection **(1)** of Section 14.

**49.** We may note here that there are no proceedings filed for specifically challenging the validity of stated alienations made by the Trustees. The impugned judgment of the Division Bench arises out of three proceedings. Two out of three are writ petitions filed by the Trustees. The first one was filed for challenging the impugned order of the



Collector and the second one was filed seeking directions regarding entering the names of the Trustees in revenue records in respect of the Trust properties. The third proceeding is the Public Interest Litigation, in which there is a prayer for issuing a writ of *mandamus* to direct inquiry through CBI. Therefore, there was no occasion for the Division Bench to declare that the sale transactions are void especially when the purchasers were not before the High Court. Nevertheless, it is necessary for the Registrar to exercise powers under Section 22 and call for necessary records pertaining to the alienations made by the Trustees. Thereafter, the Registrar shall exercise powers under Section 23 and decide whether any loss was caused to the Public Trust as a result of alienations and if any loss was found to have been caused, he shall quantify the amount in accordance with sub-Section (2) of Section 23. He may also consider of invoking sub-section (1) or (2) of Section 26 as observed above, if found necessary.

**LEGALITY OF THE ORDER OF THE COLLECTOR** (Question – e)

**50.** We may note here that the order of the Collector which was impugned before the High Court was passed without giving an opportunity of being heard to the Trustees of the Khasgi Trust and the purchasers. A show cause notice was issued to the Trustees by the Registrar on the basis of the complaint of the Member of the Parliament. Though the Trustees replied to the notice, even the reply was not considered by the Collector. Only on this ground, the said order ought to be set aside. As a matter of fact, the Collector had no jurisdiction to decide the issues of title as well as mismanagement of the affairs of a Public Trust. For the same reason, even the report of the Commissioner dated 24<sup>th</sup> May 2012 and the report of the Principal Secretary to the Chief Minister dated 2<sup>nd</sup> November 2012 are without jurisdiction. The reports have been made in breach of the principles of natural justice without affording an opportunity of being heard to the Trustees.

**VALIDITY OF THE DIRECTION TO HOLD INQUIRY THROUGH ECONOMIC OFFENCES WING** (Question – f)

**51.** There was no warrant to direct inquiry through the Economic Offences Wing of the State Government as there is no finding that there was *mens rea* on the part of the Trustees. No finding has been recorded by the High Court based on material that the alienation made by the Trustees has resulted in causing loss to the Trust and that the entire sale consideration being diverted for personal use. It is noticed from the record placed before us that the entire consideration received from the purchasers has been credited to the account of the Trust. The allegation of misappropriation can be gone into only by the Authorities under the Public Trusts Act. Moreover, the direction issued by the High Court proceeds on the erroneous assumption that the Trustees have made misappropriation of the Government properties. There is no offence registered against the Trustees. Hence, Economic Offences Wing cannot be directed to hold an inquiry or investigation in connection with the subject matter of this proceeding. In other words, the direction given by the High Court vide the impugned Judgment in that regard will have to be held to be *non est* in law. Though the said direction is unwarranted, as observed earlier, the Registrar will have to initiate necessary proceedings under the Public Trusts Act and carry them to a logical conclusion.

## **MAINTAINABILITY OF WRIT PETITIONS** (Question – g)

**52.** A contention was raised that only one Trustee had filed writ petitions before the Learned Single Judge for challenging the impugned order of the Collector and seeking other reliefs. The contention is that he was not authorized by the other Trustees to file the proceedings of writ petitions. The impugned order of the Collector purports to decide the issue of Title of the Trust properties by holding that the properties in Part 'B' of the Schedule to the Trust Deed are vested in the State Government. Even assuming that there was no express authority given to the writ petitioner in the form of a resolution of the Board of Trustees to file the writ petitions, even an individual Trustee was entitled to take proceedings for questioning such orders, which adversely affect the Trust and /or its beneficiaries. On the contrary, it is the duty of every Trustee to take such action of challenging an order holding that the properties held by the Trust are not the Trust properties. Moreover, none of the Trustees has come forward to challenge the authority of Trustee Shri S.C. Malhotra who had filed writ petitions and further proceedings. There was also a direction issued to the Economic Offences Wing to hold an inquiry about the misappropriation of the Trust property by the Trustees. Every Trustee was affected by the said direction. Therefore, in the facts of the case, the objection raised to the maintainability of the petition filed by one of the Trustees cannot be sustained.

## **CONCLUDING PART**

**53.** In view of the discussions made above, the impugned judgment of the Division Bench cannot be sustained in toto. However, the view taken by the Division Bench that the Khasgi Trust is governed by the Public Trusts Act and no alienation of the Trust properties could be made without complying with Section 14 thereof, will have to be affirmed. Even the order of the learned Single Judge cannot be sustained as he has virtually directed the rewriting of the Trust Deed.

**54.** There are submissions canvassed across the Bar about the locus of the applicant in I.A.No.124266 of 2020 filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020. It is not necessary for us to go into the said question finally. We leave the said question open to be decided in appropriate proceedings.

**55.** As far as Civil Appeal arising out of Special Leave Petition (C) No.19063 of 2021 is concerned, the alienation was made by the Trustees in favour of the appellant after obtaining the previous sanction of the Registrar by the order dated 16<sup>th</sup> October 1997. Therefore, the Registrar will have to make an inquiry limited to the question whether compliance of the conditions incorporated under the said order has been made by the Trustees. If there is a noncompliance, the Registrar will have to invoke the provisions of the Public Trusts Act for taking necessary action.

**56.** Therefore, the appeals must succeed in part and we pass the following order:-

- a. We hold that the Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore, is a Public Trust governed by the provisions of the Madhya Pradesh Public Trusts Act, 1951;
- b. We, therefore, direct the Trustees to get the Khasgi Trust registered under the Public Trusts Act by making the necessary application within a period of one month from today;

- c. We hold that the properties described in Part 'B' of the Schedule to the Trust Deed, are properties of the said Public Trust. However, alienation of the said properties can be made only by taking recourse to Section 14 of the Public Trusts Act;
- d. We hold that the Supplementary Trust Deed dated 08<sup>th</sup> March 1972 is valid. But, the Trustees of the Khasgi Trust shall be entitled to alienate the Trust Property only after complying with Section 14 of the Public Trusts Act;
- e. We hold that the direction issued by the High Court to Economic Offences Wing of the State Government to hold an inquiry was not warranted;
- f. We direct the Registrar under the Public Trusts Act, having jurisdiction over Khasgi Trust, to call for the record of the Trust relating to all the alienations made by the Trustees. After holding an inquiry as contemplated by Section 23, the Registrar after giving an opportunity of being heard to all concerned shall determine whether by virtue of the alienations made by the Trustees, any loss was caused to the Public Trust. If according to him any such loss was caused to the Public Trust, he shall decide and quantify the amount liable to be paid by the concerned Trustees to the Khasgi Trust.
- g. After holding an inquiry as aforesaid, if found necessary, he may invoke the power of making an application to the Court under sub-Section (2) of Section 26. The Registrar may take such other action and initiate such other proceedings which are warranted by law;
- h. However, as regards the alienation made in favour of Shri Gajanan Maharaj Sansthan – the appellant in Civil Appeal arising out of Special Leave Petition No.19063 of 2021, after calling for the record, the Registrar will hold an inquiry limited to the issue whether the alienation was made only after complying with the conditions incorporated in the order dated 16<sup>th</sup> October 1997. If he finds after holding an inquiry that compliance was not made with any of the conditions, he shall initiate appropriate proceedings in accordance with the Public Trusts Act;
- i. Subject to the above directions, the impugned judgment of the Division Bench as well as the impugned judgment and orders dated 28<sup>th</sup> November 2013 of the Learned Single Judge of the Madhya Pradesh High Court, are set aside.
- j. Civil Appeals are partly allowed in the above terms.