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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 23.01.2020

CWP No.4744 of 2018

Simrat Randhawa ...Petitioner

Vs.

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anupam Gupta, Senior Advocate, with
Mr. Bhavnik Mehta, Mr. Ashok Kumar, Mr. Gautam Pathania,
Ms. Gurneet Sagoo and Ms. Harmanjit Kaur, Advocates,
for the petitioner.

Mr. Atul Nanda, Senior Advocate & Advocate General, Punjab with Ms. Anu Pal, DAG, Punjab for the State of Punjab.

Mr. Puneet Bali, Senior Advocate with
Mr. S.S.Momi, Advocate for respondent No.3.

Mr. Baldev Raj Mahajan, Senior Advocate & Advocate General, Haryana, with Mr. Saurabh Mohunta, DAG Haryana for the State of Haryana.

Mr. Satya Pal Jain, Senior Advocate & Additional Solicitor General of India, with Mr. Brijeshwar Singh Kanwar, Advocate for UOI.

RAJIV NARAIN RAINA, J.

1. Questions of considerable public importance have been raised in this petition which have the potential to affect a large number of cases arising out of 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (for short 'the MWPSC Act' or 'the Act') in the matter of "eviction" by the Maintenance Tribunals set up under section 7 of the MWPSC Act. The Act provides for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and

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recognised under the Constitution and for matters connected therewith or incidental thereto.

2. The validity of the Punjab Action Plan – 2014 is the centre stage of this case to examine whether it can pass judicial scrutiny tested on several grounds raised by the petitioner which are adverted to below and discussed with the help of precedents and a large number of legal principles addressed to determine the issue/s on a larger canvas which is not judicially travelled before past precedents, as Mr. Anupam Gupta puts it, on the question of eviction and dispossession under the Action Plan, the legal validity of which is challenged on the ground of it being manifestly arbitrary and *ultra vires* the Act itself and the Rules framed there under as they are inconsistent with the scheme, objects and purposes of the MWPSC Act which was to establish only a Maintenance Tribunal to carry out the purposes of the Act in which eviction was not part of the enacted social policy.

3. The mischief sought to be tackled by parliament due to withering of the joint family system gave birth to the MWPSC Act is contained in the Statement of Objects and Reasons in the Bill. It would be useful to revisit those declarations as the backdrop for the determination of a limited issue raised by the petitioner regarding the validity of the Punjab Action Plan, 2014 notified under the Act and rules introducing the concept of eviction for the first time outside the common law. They are reproduced:-

> "Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to

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emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens

(b) providing better medical facilities to senior citizens

(c) for institutionalization of a suitable mechanism for protection of life and property of older persons.

(d) setting up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives."

4. Section 2(b) of the MWPSC Act defines "maintenance" to include provision for food, clothing, residence and medical attendance and treatment. Section 2(f) defines "property" to mean property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights of interests in such property. Section 3 provides that the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any

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instrument having effect by virtue of any enactment other than this Act. There is a provision of appeal to the Appellate Tribunal against the order of the Tribunal, where the Sub Divisional Magistrate has passed the order. The Appellate Tribunal shall be presided over by the Officer not below the rank of District Magistrate. The order of the Appellate Tribunal is final under section 16(5) and open to challenge only in writ jurisdiction under Articles 226 or 227 of our Constitution. An Appellate Tribunal has not been constituted by Punjab like the Delhi law where appeals from the District Magistrate go to The Commissioner.

5. Chapter V is the arena where the legal battle between a petitioning daughter-in-law, namely, Dr. Simrat Randhawa [henceforth Simrat Randhawa] against her mother-in-law, namely, Dr. Surinder Kaur [respondent No.3, for short 'Surinder Kaur'] is to be resolved. Surinder Kaur has succeeded in evicting Simrat Randhawa from the property by order dated 14.11.2017 endorsed on 1.1.2018 and the review order dated 15.11.2017 passed by the Court of Shri Kumar Amit, IAS, District Magistrate, Patiala in File No.8 instituted on 12.08.2015 by her. The order dated 14.11.2017 records that Surinder Kaur is owner of the property in dispute and has a legal right to take possession of her house and property. It is further recorded that full opportunity was afforded to Simrat Randhawa to lead her defence but she did not produce any report or evidence in her favour. Rather, she remained absent from court proceeding from which the District Magistrate inferred that she is in illegal possession over the property of Surinder Kaur, her mother-in-law. This aspect is kept for later discussion in this order at the appropriate part of the discussion as the order sheets [zimni] somewhat expose the functioning of the District Magistrate/s-cum-

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Maintenance Tribunal/s cited by Mr. Anupam Gupta from the paper-book [at pages 429-437] in support of the thesis he has propounded that Executive Magistrates under the MWPSC Act are executive officers conferred with judicial powers of eviction and are commonly seen as amenable to executive pressures and they should not be entrusted judicial and quasi judicial powers in the matter of eviction while dealing exhaustively with the subject of separation of powers and the place of the Rule of Law in the construction of the Action Plan to keep steadfast on the path of a fair, impartial and independent determination of valuable rights of an evictee member of the family which can often be complex issues of private law over property of a Hindu family and such a jurisdiction would usually require for determination judicial training and experience like the civil judges are accustomed to exercise. The zimni orders tell their own state of affairs on how the Tribunal functions, where some of the orders are signed by the Reader to the District Magistrate. Mr. Gupta may not be wholly wrong to suggest that the zimni orders are the best testimony in the consideration of quashing the order of eviction, in this case, being a non-speaking one and pre-eminently calling for at the least a remand for passing fresh orders on merits. “We must know what a decision means before the duty becomes ours to say whether it is right or wrong', reads an oft-cited statement of Cardozo J.,” I have therefore quoted the zimni orders in *extenso* for any reasonable person of ordinary intelligence reading them that he might come to the same conclusion, that is, of erosion of trust and faith in the proceedings in the hands of an executive officer presiding over the Tribunal. The order sheets will be reproduced at the apt place in the course of recording Mr. Gupta’s contentions on this aspect among a large range of legal and constitutional contentions advanced

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by him while assailing the *vires* of the Action Plan, 2014. [See; para 20, infra].

6. The basic facts are these. Initially, Simrat Randhawa filed a civil suit at Patiala for declaration that the properties described, including the house in question, are ancestral coparcenary property and all the gifts, transfers, wills etc. in favour of the six defendants arrayed therein, including the third respondent, as defendant No.1, are null and void. The Suit for declaration to the effect that the plaintiffs [Simrat Randhawa and her three children] are owners in actual peaceful and physical cultivating possession of the suit lands being the sole surviving legal heirs of deceased Rajiv Inder Singh @ Pawandeep Singh over the properties situated at Village Nasirpur, Bir Bhadurgarh, Tehsil & District Patiala and lands falling in the revenue estate of Village Sultanwind, District Amritsar described in detail in the Head Note to the plaint, was filed in June 2014 vide plaint dated 3.6.2014 (P-9). Issues were framed by the trial court in August of the same year to the following effect and are being tried and contested in the civil court at Patiala:

> "1. Whether plaintiffs are entitled to declaration as prayed for? OPP
>
> 2. Whether gift deeds, wills transfer deeds, civil court decrees, mutation etc. sanctioned in favour of defendants with regard to estate of Basant Kaur and Sikander Singh are illegal, null and void and without consideration and are liable to be cancelled/set-aside? OPP
>
> 3. Whether property in dispute is ancestral coparcenary property? OPP
>
> 4. Whether plaintiffs are entitled to permanent injunction as prayed for? OPP

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5. Whether will dated 14.11.1999 was executed by Sikander Singh in favour of Surinder Kaur? OPD
6. Whether Surinder Kaur has executed a will in favour of Madhuvir Singh, Rajiv Inder Singh, Poonam and Selina? OPD
7. Whether Parkash Kaur has executed a will in favour of Surinder Kaur? OPD
8. Whether plaintiffs are estopped from challenging will executed by Sikander Singh, Basant Kaur and Parkash Kaur? OPD
9. Whether plaintiffs are barred to challenge transfer deeds, wills, gifts etc.? OPD
10. Whether present suit is not maintainable? OPD
11. Whether plaintiffs have concealed the material facts from the courts? OPD
12. Whether suit is barred by limitation? OPD
13. Relief."

7. Similarly, Surinder Kaur also litigated in the civil court by filing a suit for mandatory injunction on 24.9.2014 praying for a decree of eviction against Simrat Randhawa, which suit is also pending adjudication in the courts at Patiala. The petitioner asserts that thirteen vital issues are pending trial regarding title to the disputed property and other family properties in her suit, for settling rights therein, including on the nature and effect of long settled possession and other enforceable rights and interest in property are all matters *sub judice* which require proof by production of evidence for determination by the civil court in a trial between the present parties and others including two biological daughters of the third respondent, namely, Smt. Salina and Smt. Poonam [both married and living with their families and who allegedly want to "usurp the property" out of "greed and malice" [para. 3 (j) as asserted by Simrat Randhawa] and are said to have been given in adoption through registered adoption deeds executed in the

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year 1972 by the parents of the late husband of the petitioner and the adoptive parents, members of the extended family. It is pleaded that they have thus lost their legal rights over the property of their grandfather and father coming from lands left behind in district Montgomery in pre-partition India with lands allotted in Patiala and Amritsar districts by way of rehabilitation and compensation as claims in lieu of land left behind in West Pakistan and thus claiming the properties to be ancestral in nature. However, no opinion at all can or is expressed on these issues which are pleaded in the petition as they are pending adjudication before the civil courts so as not to prejudice the parties. They are mentioned so that the court is not seen to have skipped them over although the examination is confined to purely legal issues in this case regarding power of eviction. Neither am I biased or swayed by them. They are not the portfolio in the case in hand.

8. But the fact of the matter remains that the first suit was filed by Simrat Randhawa to assert her rights in the court of competent jurisdiction. It was in January 2015 [20.1.2015] that Surinder Kaur after filing her suit filed the complaint under the MWPSC Act for eviction of her daughter-in-law and has been successful by the impugned order under challenge.

9. Both the suits pre-date the promulgation of the Punjab Action Plan on 27.11.2014. It is clarified that in some of the documents/pleadings presented before the Tribunal and found in the present file, the date of filing is mentioned as 20.1.2014 which is incorrect because in the complaint/application for eviction under the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012, Surinder Kaur has herself in paragraph 6 thereof specifically pleaded that "*In April 2014 I was imprisoned in my house by locking the gates…*". Obviously, the application

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could not have been filed earlier to that date. The contents of the application have a material bearing since that is what sparked the present litigation under the MWPSC Act. The application to the District Magistrate is reproduced to see what Surinder Kaur alleged as the basis of the litigation:-

> "Subject: Eviction under 'Punjab Maintenance and Welfare of Parents and Senior Citizens Rules-2012'.
>
> Sir,
>
> I, Dr. Surinder Bual aged 85 years w/o Late S. Sikandar Singh, am resident of Nasir Pur Farm, near Punjabi University, Patiala.
>
> I hereby stated the following facts:
>
> 1. I am a senior citizen and own a farm house situated in Village Nasirpur, near Punjabi University, District Patiala, alongwith agricultural land in Khasra No.1-6 measuring 15 Bighas 16 Biswas.
> 2. I am living here since 1958 at the above said farm house along with all the infrastructure including servant quarters, sheds & tube wells are in my ownership and possession.
> 3. My daughter-in-law Simrat Randhawa w/o my only son Rajeev Inder Singh came to India from USA in the end of 2004 and started living with me in my above said farm house.
> 4. Unfortunately, my son Rajeev Inder Singh died on 28th Dec-2011 due to kidney cancer. Once my son passed away, whom I loved so much, I could not bear his loss and I became ill and suffered heart attack.
> 5. After the death of my son, Ms. Simrat Randhawa wants to grab my entire property in connivance with Gurinder Singh Dhillon, DIG, Ludhiana Range who was earlier posted at PAP Commandant Bahadurgarh and he was living in urban estate, Patiala. He had started interfering in my family matters and property issues

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belonging to me and my daughters and other family members and became a close friend of Simrat Randhawa. They together have been harassing me and my family for the last two years.

6. In April, 2014 I was imprisoned in my house by locking the ages of the farm house and no one was allowed to meet me including my daughters. Only after my daughter filed Habeas Corpus in the Punjab & Haryana High Court, Chandigarh which issued orders for my release and provided police security to me, I was allowed to see my daughters and other family members.

7. But after Police protection was withdrawn Ms. Simrat Randhawa started misbehaving, used abusive, unparliamentary language and stopped the servants to give me food. I hired a separate servant, but he was not allowed to cook in my own kitchen and was harassed by Ms. Simrat Randhawa and her hired unidentified people. This became every day routine and worsened with each passing day, so much that she started beating my daughters whenever they came to visit me. Several DDR were registered with the Police Station but Police has not initiated any action because of the influence of DIG Ludhiana with the Police. Even unidentified people were sleeping in my house in the Drawing & Dining rooms. They did not allow any of us to enter the other rooms of the house and started beating them on being stopped from their presence in the House.

8. Many goons employed by Gurinder Singh Dhillon, DIG, Ludhiana were all the time roaming about in our farm house and property,

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threatening me and my daughter's life, liberty and property.

9. I have only one House where I am presently living at Nasirpur Farms. While Ms. Simrat Randhawa has three houses which have been rented and Ms. Randhawa is enjoying the benefits of these houses given by my son to her. Unidentified elements who have been banned entry in the house including Mr. Gurinder Singh Dhillon continue to secretly visit the house at odd hours to meet Ms. Simrat Randhawa which is most unacceptable to me after the death of my son.

In the circumstances mentioned above I would like to request that Ms. Simrat Randhawa to be evicted from my house which is owned by me with immediate effect under Punjab Maintenance Welfare Parents and Senior Citizen Rule-2012 enforced by Punjab Government recently.

Intkaal of the above said property is attached for reference.

I would appreciate if the District Magistrate could do the needful at the earliest so that I could live in peace at this old age and could enjoy the company of my children and other family members to look after me in my ailing health."

Other than vague allegations made that she suffered imprisonment etc, the third respondent has not stated by whom [see para. 6] or the nature and material particulars of abuse and ill-treatment meted out to her by the petitioner and when and how. There are no details or annotated particulars pleaded in the application on which cognizance was taken by the District Magistrate-cum-Maintenance Tribunal, Patiala.

10. It bears out that Surinder Kaur instituted proceedings under the MWPSC Act against Simrat Randhawa on 20.01.2015 before the Sub

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Divisional Magistrate, Patiala. The Sub Divisional Magistrate by his order dated 24.07.2015 dismissed the application filed by Surinder Kaur finding that Simrat Randhawa was not an unauthorized occupant of the property in dispute being the widow of the only son of Surinder Kaur, namely, late Rajiv Inder Singh. He found that Simrat Randhawa and her mother-in-law Surinder Kaur lived happily from 2004 to 2014 and no such dispute ever arose between them. Their relations had turned sour after the death of Rajiv Inder Singh [following an illness diagnosed as Kidney cancer on 28.12.2011]. Therefore, the daughter-in-law was residing in the house in a legal manner rearing her minor children. The authority did not find it a fit case for eviction from the suit property. So far maintenance is concerned, it was the admitted position that Surinder Kaur is a wealthy lady and does not need financial assistance. As far as security and privacy of Surinder Kaur is concerned, the SDM directed the Senior Superintendent of Police, Patiala to ensure that no unauthorized person/s enter/s her house without her consent and if such a thing happens immediate action may be initiated by the local police.

11. Aggrieved by this order, an appeal was filed on 12.08.2015 before the District Magistrate-cum-Maintenance Tribunal, Patiala. The Appellate Authority adverted to the notification issued by the Punjab Government dated 27.11.2014 [the Action Plan] and accordingly opined that the appeal had to be decided on merits after hearing parties and after perusing the case file. The order of the SDM, Patiala was found by the District Magistrate to be lacking in this aspect and was accordingly set aside and the case was remanded with a direction to pass a fresh order within a month after hearing both the parties vide order dated 22.06.2016.

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12. Feeling aggrieved, Surinder Kaur filed CWP No.19006 of 2016 before this Court assailing the order of remand. This Court by an elaborate 34 page judgment and order dated 05.04.2017 held that the remand order was passed by the District Magistrate after having received the report under Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 upon notifying of the Action Plan on 27.11.2014, whereby the State Government had provided the procedure for eviction from the property/residential building of senior citizen/parents of unauthorized occupant. The report by the SDM was made under Rule 23 (1) (iii) to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application and if the District Magistrate is satisfied that any son or daughter or legal heir of a senior citizen/parent/s is in unauthorized occupation of any property as defined in the MWPSC Act, a notice is required to be issued to such person/s in writing calling upon all person/s concerned to show cause as to why an order of eviction should not be issued. Learned Single Judge relied on the Division Bench judgment of this Court in Justice Shanti Sarup Dewan Vs. U.T. Chandigarh, 2013 (4) LH (P&H) 3063 which held that the provisions of the MWPSC Act are not only restricted to grant of maintenance, but also cast an obligation on the persons who inherit the property of the senior citizens to maintain such aged relatives by providing protection of life and liberty. Reliance was also placed on case reported in Hamina Kang Vs. District Magistrate (UT) Chandigarh & others, 2016 (2) PLR 138, wherein it was held that when a daughter-in-law is staying in the property exclusively owned by the mother-in-law she cannot be held entitled to claim right of residence and the eviction order could be passed against her in proceedings under the MWPSC Act. This Court also

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noticed the decisions in Gurpreet Singh Vs. State of Punjab, 2016 (1) RCR (Civil) 324; Sanjeev Kumar & another Vs. District Magistrate, UT Chandigarh & others, 2016 (1) Law Herald 720; Promil Tomar & others Vs. State of Haryana & others, 2004 (1) RCR (Civil) 403; Ashwinder Singh & another Vs. Bhagwant Singh, 2014 (3) RCR (Civil) 906 and Savita Sharma & others Vs. District Magistrate & others, 2016 (5) RCR (Civil) 998, holding that order of District Magistrate passing eviction order is within the jurisdiction and power vested in the Tribunal under the MWPSC Act. The court was not called upon examine the validity of the Action Plan and it was assumed that power to evict flowed naturally from the MWPSC Act.

13. Accordingly, this Court in that case filed by Surinder Kaur set aside the order holding that the jurisdiction of the SDM ceases to exist after report regarding title and verification of the facts mentioned in the complaint is submitted to the District Magistrate. It was always open to the District Magistrate to take the evidence and consider the circumstances at his own level. The Court found no provision in the rules or in the Action Plan for delegating the authority of the District Magistrate to the SDM in the garb of remand. Such power did not exist. The order was set aside and the matter remitted to the District Magistrate for a fresh decision on merits after hearing parties. No opinion was expressed on the merits of the case lest parties are prejudiced.

14. This is how the impugned order dated 14.11.2017 released on 1.1.2018 has come into existence with the mother-in-law succeeding in the Court of the District Magistrate-cum-Maintenance Tribunal, Patiala ordering eviction of the petitioning daughter-in-law from the disputed property in Nasir Farm in the exercise of power under the Punjab Action Plan, 2014.

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An overview of the property at Nasirpur farm.

15. The disputed property is spread over many acres of suburban land in Patiala near the Punjabi University adjoining the city known as the Nasirpur Farm on the main road as was explained to me with the site plans on file suggesting a sprawling bungalow with lawns, two gates at far ends with a long drive in, car garages and out houses, two godowns, three stores, tractor shed, Guava and Kinnow orchard, fertilizer room, a swimming pool, kennels, water tanks, "open courtyards and 10 servant quarters" built on a large tract of gated property admeasuring 15 Bighas and 16 Biswas of land in what appears to be a large residential complex which was shared by the petitioner and her progeny, two sons, one of them minor and a minor daughter, with the mother-in-law/grandmother without any apparent trouble till problems cropped up between them, attributed by the petitioner to the interference by the two married biological daughters of the third respondent given allegedly in adoption in 1972, leading to this acrimonious litigation.

16. The petitioner asserts in her objections dated 18.5.2015 to the complaint of Surinder Kaur that there is a joint single kitchen at the farm house. Simrat Randhawa has resided there since she returned in 2004 from the United States of America with her late husband to live with his mother and his family till the passing of the impugned order and, thereafter, continues in possession under the interim protection against eviction by the impugned order dated 1.1.2018. The property has been Simrat Randhawa's shared matrimonial home. There is an interim stay operating in this case in favour of the petitioner till the present. Surinder Kaur's husband late Sikandar Singh passed away several years ago in the year 2000. It may be observed that it is not a case of constricted living space where one party is

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thrown on the face of another leaving perhaps, no option except to decide in favour of the owner/title holder to remove irreconcilable friction between the parties, if the conclusion is reached on the material, for the court to protect the life and property of the senior citizen and keep safe from bodily harm.

17. In my opinion living space and size of the accommodation is not an irrelevant factor while adjudging rights of the parties under the MWPSC Act. A senior citizen and the offending party living in separate and spacious dividable units within the same large property is also not an irrelevant factor and deserves to be kept in mind while dispensing justice under the Act in the facts and circumstances to balance out the competing interests till the rights are determined conclusively by the civil courts where the present parties are in contest in the district courts at Patiala even before the Action Plan saw the light of day. Therefore, each case has to be decided on its own facts, as is the *summum bonum* [‘the highest good principle’ evolved by the Roman philosopher Cicero] of judicial decision-making process. Hence, no hard and fast-cut and dry-rule can be laid down, applied or followed of a universal application even within the Act. This is primarily a judicial function albeit to strike a proper and equitable balance of the competing interests of parties already locked in litigation which experience and judicial independence the District Magistrate may lack, as urged by Mr. Gupta, having not the judicial training and for the reason that he is not a dedicated Tribunal as the officer has myriad other executive functions to perform and discharge on a working day and is supposed to, in implementation of State policy. Therefore, the provisions of the Act cannot be applied mechanically and automatically on the complaint of a senior citizen based solely on title leading to summary eviction. If law did not

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dictate otherwise, then the District Magistrate need not pass a speaking order and can simply dispossess the defendant on the basis of title of senior citizen by creating a fiat accompli of eviction even before rights are declared in the civil proceedings. Restitution of rights after protracted trial is not a fair substitute for the present status quo. This is the inherent philosophy behind courts power to issue stay orders pending outcomes of litigation. It cannot be lost sight of that there is in existence a status quo order regarding Nasirpur Farm House issued by an order of this Court in CR No.4238 of 2015 which is still operating. The history of that litigation which was not before the District Magistrate-cum-Maintenance Tribunal is narrated hereafter.

17-A. In the civil suit seeking declaration, the petitioner Simrat Randhawa moved an application under Order 39 Rule 1 & 2 CPC in her suit praying for an ad interim injunction against any forcible dispossession by the defendants over the disputed properties situated at Village Nasirpur, Bir Bahadurgarh, Tehsil & District Patiala and at Village Sultanwind, District Amritsar, which was dismissed by the trial Court vide order dated 19.8.2014. In appeal, the first Appellate Court by order dated 28.05.2015, directed the parties to maintain status quo regarding the possession of the farm house known as Nasirpur Farm at Patiala. However, qua other properties, the first Appellate Court declined to grant any interim injunction on the ground that any alienation would be hit or saved by the doctrine of *lis pendens*. The order dated 28.05.2015 was challenged by the Simrat Randhawa as a co-plaintiff with her three children with Tanvir Singh as petitioner No.1 by filing a revision petition in this Court against Surinder Kaur etc. While allowing the revision petition i.e. CR No.4238 of 2015 titled “Tanvir Singh

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& others Vs. Surinder Kaur & others", this Court by order dated 2.9.2015 issued directions and held as follows by recording facts and observing:-

> "Admittedly, the plaintiffs have challenged the gift deeds, transfer deeds and wills etc. from 1958 onwards. The plaintiffs No.1 to 3 are minors. They are two sons and a daughter of Rajeev Inder Singh @ Pawandeep Singh, who is now dead. Their claim is that the suit property was allotted in lieu of the land left by their ancestor Jagat Singh in Pakistan. Following pedigree table has been set up in the plaint:

Pedigree table

Bishan Singh
/
Jagat Singh
/

/	/	/	/	/	/	/
Satwant Raghvir Singh	Sikandar Singh	Bhupinder Singh	Mohinder Kaur	Dhanwant Kaur	Ranjit Kaur	Dhaninder Kaur

/	/	/	/
Surinder (Deft. No.1)	Poonam (daughter) (given in adoption)	Selina (daugjhter) (given in adoption)	Rajiv Inder @ Pawandeep (son)

/

/	/	/	/
Simrat Randhawa (wife)	Tanvir Singh (son)	Mehtab Singh (son)	Mehar Bal (daughter)

> Learned senior counsel for the revisionists has argued that in this case, the learned Civil Judge (Junior Division), Patiala, has passed a detailed order running into 42 pages, wherein in fact the findings have been recorded on merits as if the suit is being decided after recording the evidence. It has been argued that the approach of the learned Civil Judge (Junior Division), Patiala, is erroneous. Recording the findings at this stage would adversely affect the case of the either party. The learned Civil Judge (Junior Division), Patiala, has also reproduced the transactions between the parties, which are reproduced as under:

Sr. No.	Owner	Transferred to	Nature of transfer	Years of transfer
1.	Sikandar Singh	Suridner Kaur	Tamalaknama	1958
2.	Sikandar Singh	Kartar Singh	Sale Deed	1970
3.	Basant Kaur	Selina	Gift Deed	1970
4.	Basant Kaur Surinder Kaur	Poonam	Gift Deed	1970
5.	Basant Kaur	Rajiv, Poonam,	Will	1971

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		Selina		
6.	Parkash Kaur	Surinder Kaur	Will	1988
7.	Sikandar Singh	Surinder Kaur	Will	1999
8.	Surinder Kaur	Selina	Gift deed	1972
9.	Dhaninder Kaur	Poonam, Selina	Will	1979
10.	CS Verma	YK Dhawan	Will	

The plaintiffs claim that the suit property was ancestral. Admittedly, Rajeev Inder Singh @ Pawandeep Singh, predecessor-in-interest of the plaintiffs died in the year 2011. During his life time, he did not challenge these transactions. However, it is claimed that the plaintiffs No.1 to 3 are minors and that they have got their independent right to challenge the same. It also comes out from the order of the appellate Court that an application for correction of khasra girdawari was moved by the plaintiffs and immediately before filing of the suit, khasra girdawaris qua the land of villages Bir Bahadurgarh and Nasirpur were corrected in favour of plaintiffs that too in absence of defendants by the Assistant Collector IInd Grade and the same was upheld by the Collector, Sub Division, Patiala, on 16.7.2011, on the ground that the civil court has already passed the order of status quo. The land of the village Sultanwind is also involved. The application for correction of khasra girdawari of property at villages Bir Bahadurgarh, Nasirpur and Sultanwind is also pending. Therefore, at this stage, it will be improper to record any prima-facie findings regarding the possession of the either party over the disputed land. The plaintiffs have annexed rough sketch of villages Nasirpur, Sheikhpura, Chuharpur Kamboan, Saifdipur and Bir Bahadurgarh showing that the pipeline has been laid down for cultivation and it is claimed by the plaintiffs that the pipeline was laid as the possession over disputed property is with the plaintiffs. Some photographs have also been placed on file to show the possession of the plaintiffs over the disputed property.

xx xx xx

I am of the view that the doctrine of lis pendens is no substitute for the expressed order. In these circumstances, it is ordered that the parties shall maintain status quo regarding the possession over the disputed land till the disposal of suit. However, either party can adopt due course of law for correction of revenue entries or take possession. It is further ordered that any further

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alienation of the suit property can only be made by either party with the prior permission of the Court.

At the same time, it is not to be lost sight of the fact that very old documents have been challenged and in the normal course, it would take years together and may be decades when the case is actually decided. It is stated in the plaint that Surinder Kaur is suffering from spinal tuberculosis and is 83 years of age. Therefore, the interest of justice requires that the case should be disposed of expeditiously, so that the plaintiffs are not benefitted by default i.e. on account of Surinder Kaur losing a battle for life during the pendency of the suit. Therefore, in consultation with the learned senior counsel for the parties, it was proposed that the case be made date bound. The learned senior counsel for the plaintiffs has stated at bar that he will conclude his evidence within 10 effective opportunities, which will be of one month duration each. For this purpose, he will obtain the summons dasti and produce the witnesses. Similarly, the learned senior counsel for the defendants/respondents has also stated at bar that he will also complete his evidence within maximum 10 effective opportunities of one month duration each.

Therefore, it is further ordered that keeping in view the old age of defendant No. 1, the case shall be decided expeditiously. The plaintiffs shall be given 10 effective opportunities of one month duration each to conclude their evidence and similarly, the defendants shall also be given same number of opportunities of same duration. If any of the party fails to complete their evidence within the said 10 effective opportunities, their evidence shall be closed by orders.

The present revision is accordingly allowed."

CWP No.19006 of 2016 titled "Surinder Kaur Vs. State of Punjab & Others"

18. If there are no cogent and proper reasons recorded by the authority under the Act, then there would be nothing left for judicial review by the writ court which will normally compel a remand for assigning reasons, which is the infirmity found in the impugned order, which order is

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clearly in breach of the directions in the remand order passed by this Court on 5.4.2017 in CWP No.19006 of 2016 in "Surinder Kaur Vs. State of Punjab & Others" in which Simrat Randhawa was arrayed as respondent No.4. The operative part of that judgment and order is as follows:

> "In the present case, the order annexure P-6 has been passed by the District Magistrate remanding the case to the SDM after having received the report. The jurisdiction of the SDM ceases to exist after report regarding title and verification of the facts mentioned in the complaint. In case any clarification pertaining to the title or facts is not sufficient for determination of the claim of the senior citizen, it is always open to the District Magistrate to take the evidence and consider the circumstances at his own level. There is no provision in the rules or the 'Action Plan' for delegating the authority of District Magistrate to the SDM in the garb of remand.
>
> The order annexure P-6 is, therefore, illegal and without sanction of law and is hereby set aside. It is ordered that the District Magistrate, Patiala will proceed in accordance with law on the basis of the material supplied by the SDM. Any observations or opinion of the SDM regarding authorized or unauthorized occupation will not be binding on the District Magistrate. <u>It will be open to the District Magistrate to form his independent opinion and give fair opportunity to the parties to take final decision regarding the application for eviction filed by the petitioner.</u>
>
> Allowed in the aforesaid terms.
>
> Parties are directed to appear before the District Magistrate on a date notified by the District Magistrate after the receipt of a certified copy of the order."
>
> (emphasis added)

19. When independent reasoning and fair opportunity [of hearing] is demanded by an order of this Court it becomes an obligation and a serious matter in case of breach, as every judicial or quasi judicial authority must

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demonstrate in writing in remand what ought to be the factors which have weighed in his mind to conclude in a particular way. In such type of cases the field is wide open to evidence and it's sifting in a court of law and not by the feeble hands of the executive authority passing orders casually fixated by title and age.

The Order Sheets on the File of the Tribunal.

20. Mr. Anupam Gupta refers to the order sheets on the file of the Court of District Magistrate-cum-Maintenance Tribunal, Patiala to understand the functioning of the executive authority conferred with judicial power of eviction, which is best brought out in the record of proceedings. The zimni orders and the impugned order are reproduced below in tabulation form:

Zimni Orders:

11.05.2017	This case has been ordered to be re-heard by the Hon'ble Punjab & Haryana High Court. File be registered and the parties be summoned. Accordingly, the file be presented on 24.05.2017. Sd/- District Magistrate
24.05.2017	File presented. Parties were called, but the parties do not come present. Report has been received on summon that the house is locked. The Presiding Officer due to busy in the meeting with the Commissioner for official work unable to attend the court. Accordingly, the file be presented on 31.05.2017 for appropriate order. Sd/- Reader
31.05.2017	File presented. Parties were called. But the parties did not come present. The Presiding Officer is away to Chandigarh for official work.

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	Accordingly, file be presented on 07.06.2017 for previous proceedings. Sd/- Reader
07.06.2017	File presented. Parties were called, but the parties did not come present. The Presiding officer unable to come in the court due to busy in the official work. Accordingly, the file be presented on 13.06.2017 for previous proceeding. Sd/- Reader
13.06.2017	File presented. Parties were called. But the parties did not come present, so they be summoned. Accordingly, file be presented on 12.07.2017. Sd/- District Magistrate
12.07.2017	File presented. Parties were called, but the parties did not appear nor the summon returned back after compliance. So, summon be sent again. Accordingly, file be presented on 26.07.2017. Sd/- District Magistrate
27.09.2017	The applicant and respondent themselves appeared through the proxy counsel. A request has been made by the respondent herself that she has to go to her children and sought long date in the case and the same has been granted on her request. Accordingly, the file be presented on 31.10.2017. Sd/- District Magistrate
31.10.2017	The applicant and respondent themselves appeared through the proxy counsel, but the respondent did not come present. Now file be presented on 07.11.2017 for perusal/ consideration.

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	Sd/- District Magistrate
07.11.2017	File presented along with the applicant through counsel. But the respondent did not come present. The Presiding officer is away to Chandigarh for government/official work. Accordingly, the file be presented on 14.11.2017 for previous proceedings. Sd/- Reader
14.11.2017	File presented along with the applicant through counsel Munish Mittal, Advocate. Amandeep Singh, Advocate has produced his vakalatnama on behalf of respondent, the same be attached with the file. The counsel for the applicant argued the case, but the counsel for the respondent has not argued the case and sought adjournment for argument. This case is pending since long. After the request was being made by the respondent on 27.09.2017, the case was adjourned for long date. File perused. While agreeing with the arguments of the counsel for the applicant, it is hereby ordered to get the house vacated from the respondent. **The detailed order is attached separately.** Sd/- District Magistrate

21. The order under review manifests several serious shortcomings in its facile reasons, intentions and the oblique logic, inasmuch as, the officer appears conjuring up a decision first and then finding reasons, the easiest of which is title to property in revenue record, to evict the respondent before it on irrelevant considerations predisposed towards a particular end and then penning many pages in trying to justify the means. It is mostly repetitious

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and redundant without any original reasoning. Filling pages for nothing, the Presiding Officer has led one in circles without even attempting to consider the entire range of issues in the pleadings of the parties. It imagines directions issued to counsel for Simrat Randhawa which is not supported by the order sheets. The order betrays a lack of application of mind. The District Magistrate/Tribunal has observed that "full opportunity has been afforded to the respondent to lead her defence but she has not produced any report or evidence in her favour" This is far from the truth. The objections and the pleadings of Simrat Randhawa and Surinder Kaur have not been noticed, dealt with and considered while passing the order which has serious consequences. This is in breach of the directions of this Court in CWP No.19006 of 2016 that fair opportunity of hearing had to be given to both the parties before deciding the complaint moved by Surinder Kaur. Ignoring all other relevant considerations arising from the pleadings in the complaint, objections/reply; rejoinder and sur-rejoinder, the Tribunal has gone by title alone to evict Simrat Randhawa and conveniently left out relevant considerations. Pleadings on the nature of the property from which title was claimed have not been addressed at all, even when rather serious issues regarding ownership and status of the properties including at Nasirpur Farm was raised before him and are under adjudication in the civil court initiated even before the complaint was made on 24.01.2015. He should have asked why Surinder Kaur in her complaint had not disclosed the existence of the civil litigation and had on the other hand suppressed them. When those facts were brought to his notice in the objections he mulled them over preferring to keep silent on their impact. Only on the basis of non-appearance of Simrat Randhawa and the non-availability of the arguing counsel on one crucial day

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for which adjournment was reasonably sought, the Tribunal came to the facile conclusion that she is in illegal occupation of the Farm house and threw her out. Unfortunately, the Tribunal relied only upon the catch words of the judgment [made by a reporter] in case Gurpreet Singh Vs. State of Punjab & others, 2016 (1) RCR (Civil) 323 and allowed the complaint. This case has been explained and distinguished in this order in paragraphs 73 & 74 below. On the first page of the order, the Tribunal has wrongly recorded the date of filing as 24.01.2014. This aspect has been explained in this order in paragraph 9 above. The relevant extract from the impugned order is reproduced below:

> "(2) On receipt of the order passed by the Hon'ble Punjab & Haryana High Court, Chandigarh dated 5.4.2017, parties were summoned. Sh. S.S.Momi, Advocate has submitted/produced his vakalatnama on behalf of the applicant Surinder Kaur. Simrat Randhawa herself appeared on 20.09.2017 and 27.09.2017.
>
> (3) A prayer has been made by Sh. S.S.Momi, Advocate, counsel for the petitioner that the petitioner is old and widow lady and she has one Farm House at Village Nasirpur, Near Punjabi University, Patiala in which house has been constructed and the agriculture land is measuring 15 bigha 16 biswas bearing khasra No.1-6 where she has been residing. The petitioner is not allowed to meet with her relatives by the respondent. The petitioner has no other house to live except the aforesaid house whereas the respondent is having three houses, which have been leased out by her and she is getting handsome income from it in the shape of rent. The petitioner is in possession over some portion of the house whereas Simrat Randhawa, respondent (daughter-in-law of the petitioner) has taken forcibly possession over the remain portion of the house. The petitioner approached the police several times in this regard but the respondent having good relation with one senior police officer, she do not allow the

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police to take some concrete steps in this regard. So, the petitioner has to face disappointment at every place. A request has been made by the counsel for the petitioner the aforesaid residential house of the petitioner be got vacated from the respondent.

(4) The respondent personally appeared in the court on 20.09.2017 and 27.09.2017, but she has not produced any witness or evidence in her defence/favour nor have produce here defence before the Hon'ble Court. Rather on the request of the respondent, the case has been adjourned for 31.10.2017. The respondent did not come present in the court on 31.10.2017 and 07.11.2017. On 14.11.2017, the junior of Sh. Munish Mittal, counsel for the respondent sought adjournment while submitting vakalatnama in the court, but the counsel for the petitioner objected for the same. The counsels for the parties present in the court were directed to proceed with the argument, but the counsel for the respondent party remained fully incapable for leading his defence.

(5) File has been inspected and the counsel for the petitioner heard. The respondent herself and through her counsel remained unsuccessful in leading her defence. The respondent has been making requests for the adjournments in order to linger on the matter and despite getting adjournments on 31.10.2017 and 07.11.2017, she did not come present in the court nor her counsel/representative come present in the court. On 14.11.2017, with an intention to seek adjournment, the junior of Sh. Munish Mittal, Advocate seek adjournment by filing Vakalatnama. On this, the counsel for the opposite party objected for the same. A direction was issued by the Court to the junior of Sh. Munish Mittal, Advocate to argue the case, but the junior of Sh. Munish Mittal, Advocate remained unsuccessful to lead his defence. He could not say anything in favour of respondent from which, it seems that the respondent do not want to say anything in her favour and want to linger on the matter without any rhyme and reason. Whereas, the petitioner is a old and widow lady and the house in dispute is under her ownership. The petitioner being old

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age lady needs proper care. In this age, a person often suffers from various diseases. In these circumstances, it is necessary to protect the property of the petitioner. The Hon'ble Punjab & Haryana High Court has passed the order or given decision in CWP No.24508 of 2015 titled as 'Gurpreet Singh Vs. State of Punjab, as per the following:

> "Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (Chapter V) Section 22, 27 and 32 – Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012, Rule 23 and 22 – House owned by senior citizen – A portion of house occupied by his son – son is licensee of his father – on complaint of father, District Magistrate has power to order eviction of son:
>
> (i) District Magistrate is competent authority to take steps for protection of life and property of the senior citizen.
>
> (ii) Jurisdiction of the Civil Court is barred in respect of all matter falling within the jurisdiction of the Act in terms of Section 27.
>
> (iii) Summary exercise of the jurisdiction by District Magistrate is without prejudice to the rights of the parties which may be determined by the civil court in accordance with law."

In the present case, the petitioner is the owner of the property in dispute. The petitioner has not only the legal right to take possession of her house, but at this stage, the petitioner is in need of her house. Full opportunity has been afforded to the respondent to lead her defence but she has not produced any report or evidence in her favour. Rather, she remained absent in the court from which, it seems that respondent is in illegal possession over the property of the petitioner. So respondent is hereby directed to vacate the house of the petitioner situated at Village Nasirpur Farm, Post Office Punjabi University, Patiala, District Patiala within two months and to deliver the possession to the petitioner. Copy of the order be

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sent to the Tehsildar (CRO), Patiala for compliance and further necessary action.

File is consigned to record room after due compliance.

Order pronounced.

Dated: 14.11.2017

Place: Patiala

Sd/-
District Magistrate, Patiala

Endst. No.1/PC-1 dated 01.01.2018"

(underscored for emphasis)

22. Mr. Anupam Gupta appears to be correct in saying the order sheet is a sad commentary on the functioning of the "court" of the District Magistrate-cum-Maintenance Tribunal. Of the ten interim orders four are signed by the Reader. On four dates, the Presiding Officer was absent being busy with executive work. Both the parties appeared for the first time on 27.9.2017 through "proxy" counsel and request was made by Simrat Randhawa to visit her children, asking for a longish date [obviously to accommodate her return] and the case was adjourned to 31.10.2017. More importantly, the Presiding Officer was absent on 7.11.2017 as he was visiting Chandigarh. The next date was 14.11.2017. Mr. Amandeep Singh, Advocate appeared on power of attorney for respondent-Simrat Randhawa. On 14.11.2017, but the case was concluded without hearing her counsel who had sought time to argue the matter. There is plethora of clear authority for the proposition that every quasi-judicial decision must be supported by intelligible reasons in writing on the face of the order settling all the pleas, factual and legal, raised by the parties, otherwise judicial review under Article 226 will be stultified, if no cogent reasons are recorded. To quote a passage from "An Introduction to American Administrative Law" by Bernard Schwartz at page 163:

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> "The value of reasoned decisions as a check upon the arbitrary use of administrative power seems clear...The right to know the reasons for a decision which adversely affects one's person or property is a basic right of every litigant (and that whether the forum be judicial or administrative). But the requirement that reasons be given does more than merely vindicate the right of the individual to know why a decision injurious to him has been rendered. For the obligation to give a reasoned decision is a substantial check upon the misuse of power. The giving of reasons serves both to convince those subject to decisions that they are not arbitrary and to ensure that they are not, in fact, arbitrary. The need publicly to articulate the reasoning process upon which a decision is based, more than anything else, requires the Magistrate (judicial or administrative) to work out in his own mind all the factors which are present in a case. A decision supported by specific findings and reasons is much less likely to rest on caprice or careless consideration. As Judges Jerome Frank well put it in language as applicable to decision-making by administrators as by trial judges, the requirement of reasons has the primary purpose of evoking care on the part of the decider. . . "

Nevertheless, eviction was ordered with reasons "recorded separately". The order came into immediate operation without pronouncing orders. The reasons were released as late as on 1.1.2018 after about one a half months. It is a patent falsehood on the part of the Presiding Officer to record in the zimni order: "*The detailed order is attached separately*." when the order was not even drafted and signed on the same day, that is, 14.11.2017 nor must he have had the time and willingness to dictate or write the long order released on 1.1.2018. He could never have written the order separately on the same day. The proceedings fail to inspire confidence. The proceedings show an undue haste in deciding anyhow and a tearing hurry to wrap up the case without much ado. He could easily have accommodated the

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counsel by a few days as he was freshly engaged. The impugned order is pre-determined and predisposed and is clearly in breach of principles of natural justice and in violation of the rule of *audi alteram partem*. It is a deaf, dumb and blind order. It has to be set aside, even leaving aside all the other arguments. If this is not a sad story I cannot tell a better one.

23. The parties are already locked in a grim legal battle in the civil courts which was and is being hotly contested by both, even before the application was filed by Surinder Kaur under [Section 5; without mentioning the provision] of the MWPSC Act which is only the remedy for demanding maintenance for failure and neglect of senior citizens, when maintenance is not the complaint of Surinder Kaur nor is it a case of restitution of transferred property from senior citizen to family member and back.

24. In her objections to the complaint Simrat Randhawa has while rebutting the allegations averred that neither the MWPSC Act nor the rules provide for eviction. The third respondent has concealed in her application/complaint of the pending civil litigation filed and contested by both sides regarding property rights; with Simrat Randhawa claiming the property as joint Hindu family coparcenary property. She has stated that she has been performing her moral and legal duties towards her mother-in-law and got her treated for various ailments from time to time spending huge amounts from her own pocket. She placed the Medical Record as Annex R-5 to the objections [para.5]. Surinder Kaur was afflicted with TB of the spine and was bedridden for a year and a half in 2012-13. The petitioner says she took full responsibility of her mother-in-law and it was she who got her medically treated [ironically both are medical doctors]; was the caregiver and says that the expenditure on medicines and treatment, including

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hospitalization costs were mostly borne by the petitioner-Simrat Randhawa. There are criminal cases filed on either side and the petitioner has averred that she has been criminally intimidated and harassed by the biological daughters of Surinder Kaur, namely Selina Singh and Poonam Dhawan and their husbands, Manjinderpal Singh @ M.P.Singh [stated in pleadings (running page 290) to be a dismissed officer] and Yogeshwar Krishan Dhawan who want to grab the property of late Sikander Singh, her late father-in-law. She informs that both the ladies live abroad and are declared proclaimed offenders. When her mother-in-law was sick for three months she says that the daughters never visited the mother. She says that like any natural mother she is fighting tooth and nail, against all odds, and braving the above influential persons to protect her rights and those of her children. The property has been under her control and management since 2009 when her husband was diagnosed with cancer dying in 2011. The entire agricultural activities and cultivation is in her hands. She has been paying the electricity bills and other bills of the property from her own resources. The property was originally in possession of late Sikandar Singh since 1958 and the mantle passed on to his son Rajiv Inder Singh who remained in peaceful possession till 2011and thereafter the petitioner is in exclusive cultivating possession of the suit property. The arranged marriage was solemnized on 27.11.1997 [I confirmed this position from Surinder Kaur when she appeared in Court when she was asked whether the couple found each other or was it an arranged alliance between both the families].

25. The sketchy complaint of Surinder Kaur and an enormous reply led her to file a replication before the SDM, Patiala. Defence was taken on available jurisdiction drawn from the Punjab Action Plan. She objected that

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civil suits are barred under Section 27 of the MWPSC Act. She denied the allegations in the objections [unable to dislodge them as they were recorded family history both well aware of, I would add]. Says that the petitioner is a licencee in the property and her licence was revoked by notice dated 6.6.2014 making the present petitioner in unauthorized possession. Rather strangely, she even disputes the date of marriage of her son with the petitioner asserting it took place in the USA on 25.5.1991, [if this is not a typing error]. This and several other allegations led to the filing of a rejoinder to the replication by Simrat Randhawa creating a heft of pleadings which have sadly gone unnoticed by the Tribunal probably because property rights were traced which are being adjudicated by the civil courts and it must have seemed inconvenient to deal with them logically and provide proper answers.

26. Simrat Randhawa asserts in rebuttal to the replication that the marriage of her son with the petitioner was performed by Anand Karaj ceremony in Gurdwara Sahib, Sector 8, Chandigarh on 27.11.1997 and not 25.5.1991. Though, on papers the marriage was registered in the USA on 25.5.1997. She has explained her property position averred by the third respondent in her replication which was aimed to show that her daughter-in-law is a person of means, holding property in her name, by reiterating her defence pleas in her sketchy complaint and rejoinder-reply. Simrat Randhawa has had again to refute allegations of interference by DIG Gurinder Singh Dhillon pleaded by Surinder Kaur as the arch antagonist.

27. At one point, in order to find an amicable settlement and if it was possible I had asked both the parties with their counsel on 10.4.2019 to appear in Court. When the matter came up for hearing on 14.5.2019, I

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passed an order which follows just below. This was after Mr. Anupam Gupta had concluded his arguments on 30.1.2019 with the learned Advocate General Punjab concluding on 5.3.2019 with Mr. Satya Pal Jain and Mr. Mahajan, AG, Haryana alone left to address arguments for which requests of adjournments were made from time to time, apart from rebuttal by the respondent counsel to be effectively heard. The third respondent was heard over many dates from the inception of the proceedings and in rebuttal by Mr. S.S.Momi, Advocate. The order reads:

> "Heard Simrat Randhawa – petitioner, who is present in Court, in camera proceedings. She has pointed out to several papers as well as the site plan, which are already on record.
>
> I have also heard Surinder Kaur – respondent No.3 in Court with Simrat Randhawa present at that point. I have also perused the orders of this Court passed in CR No.4238 of 2015 on 02.09.2015 and the orders directing maintaining of status quo regarding possession of the land described in the suit in which falls "Farm House" [as pointed out by Surinder Kaur that the property in question is described in the headnote of the plaint showing land in Village Nasirpur in Point 'D' at pp.127 of the paper-book], from where the impugned eviction has been ordered.
>
> Respondent No.3 to make efforts to call for the copies of the passports of both her daughters duly certified by the Embassy through mail on the e-mail address of the Bench Secretary attached to this Court, namely, Mr. Surinder Kumar Khurana i.e. *khuranask2210@gmail.com*. This is to know of their visits to India and the duration between February, 2012 to June, 2013.
>
> Respondent No.3 states that both the daughters are living in the United States of America since long, whereas both sons-in-law reside in India. She states that throughout the period of treatment for Spinal Tuberculosis, she was in Patiala at the 'Farm House'. However, with other ailments

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> accompanying, she shifted to Delhi to be with her daughter, namely, Poonam Dhawan, where she had undergone angioplasty with stents implanted. The treatment there was taken at Medanta Hospital. She further states that she is away from 'Farm House' at Patiala for the last two years and is presently residing with her son-in-law (Salina Singh's husband, namely, M.P.Singh) at Mohali. Lastly, she states that she does not wish to compromise the matter with her daughter-in-law.
>
> Since both the learned senior counsel, namely, Mr. Anupam Gupta and Mr. Puneet Bali are not available today for addressing arguments, the case is posted for 28.05.2019.
>
> To be taken up at 2.00 PM."

The talks failed calling for an adjudication of the case. Surinder Kaur would not give in asking for rule on her rights as a senior citizen protected by law which is her right and the court has honoured that sentiment, as it is duty bound to decide on merits.

Survey of the MWPSC Act.

28. Chapter V of the MWPSC Act deals with the protection of "life and property" of senior citizen. It comprises Sections 21 to 23. Section 21 deals with measures for publicity, awareness, etc. for welfare of senior citizens, which requires no comment in these proceedings. Neither does section 23, which declares transfer of property to be void in certain circumstances, have we any concern presently. Section 22 is at the center stage of the litigation with the eviction part of the Action Plan under the judicial lens and thus the provision requires to be reproduced with reference to the narrative as a great deal of the debate has revolved around this provision. Section 22 brings with it section 2 (f) burdened with the definition of the word "prescribed". Sections 22 and 2 (e) reads as follows:

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> "22. Authorities who may be specified for implementing the provisions of this Act – (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be **prescribed**.
>
> (2) The State Government shall **prescribe** a comprehensive action plan for providing protection of life and property of senior citizens."
>
> "2 (e): "Prescribed" means **prescribed by rules made by the State Government under this Act"** (emphasis added)

29. It is here in sub-section (2) of section 22 that the words "comprehensive action plan" has been employed by Parliament, the MWPSC Act being a Central enactment, and the key words in the section which are to be considered are "life and property" of senior citizens. The scope of such comprehensive action plan made by the respective State Governments is aimed at providing protection of life and property of senior citizens. The amplitude of the combination of the words in the expression "life and property" requires to be understood, as indisputably, as per the stand of the Central Government itself in its short reply filed, the word "eviction", as that term is usually employed, has not been used in the MWPSC Act. The 1st respondent is the State Government of Punjab. Section 32 empowers the State Government to make Rules. One of which and the material one, is contained in Rule 32(2)(f) the rule making power for carrying out the purposes of the Act without prejudice to the generality of the foregoing power. The provision lays down that State Government can

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sub legislate a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22. Section 32 lays down the following:

> **"32. Power of State Government to make rules:**
>
> 1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
>
> 2. Without prejudice to the generality of the foregoing power, such rules may provide for - a. the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8;
>
> b. the power and procedure of the Tribunal for other purposes under subsection (2) of section 8.
>
> c. the maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;
>
> d. the scheme for management of old age homes, including the standards and various types of services to be provided by them which arc necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section {2) of section 19;
>
> e. the powers and duties of the authorities for implementing the provisions of this Act under sub-section (1) of section 22;
>
> f. <u>a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22</u>;
>
> g. any other matter which is to be, or may be, prescribed.
>
> 3. <u>Every rule made under this Act shall be laid, as soon as may be after it is made</u>, before each House of State Legislature, where it consists of two Houses <u>or where such legislature consists of one House, before that House</u>."
>
> (underlined for emphasis)

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30. The Government of Punjab has framed "The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012" in exercise of powers conferred by sub-section (2) of section 32 of the Act. The word 'eviction' is not used in any of the 25 rules or in any of the forms thereto and is singularly missing. Rule 23 provides that an action plan for protection of life and property of senior citizens shall be notified by the State Government within a period of six months from the date of publication of the Rules in the Official Gazette and it may be revised from time to time. This exercise was not carried out by the State of Punjab till the Action Plan was formulated in 2014 as an executive order pursuant to the fall out of the judgment of this Court in *Shanti Sarup Diwan's* case after the rules had come into force in 2012. The Haryana Government also notified its Action Plan on 26.5.2015 in *pari materia* with the Punjab Plan. The Haryana Action Plan No.530SW-(4)-2015 was issued and notified in the name of the Governor of Haryana unlike the Punjab Action Plan which does not allude to the Governor of Punjab. I would deal with this aspect later in paragraphs 112 and 113.

31. Rule 22 defines the duties and powers of the District Magistrate. Rule 22(2)(i) makes it the duty of the District Magistrate to ensure that the life and property of senior citizens of the district are protected and they are able to live with a sense of security and dignity. Sub Rule (xi) of Rule 22 empowers the District Magistrate to perform such other functions as the State Government may, by order, assign to the District Magistrate in this behalf, from time to time. In performing his duties, the District Magistrate shall be competent to issue such directions, not inconsistent with these rules, the Act and general guidelines of the State Government, as may

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be necessary, to any Government and statutory agency or body working in the district and especially, naming, four authorities of which one is the Maintenance Tribunal and the Conciliation Officers. The others are the Panchayats and Municipalities, Educational Institutions and the Officers of the State Government in the Police Department, Health and Family Welfare Department, Information and Public Relations Department and the Departments dealing with the welfare of senior citizens [Rule 22(3)]. Sub rule (5) of Rule 22 enjoins a duty and power on the District Magistrate to act in case of any danger to the life or the property of a senior citizen.

32. The Haryana Government has framed its own Rules known as "The Haryana Maintenance of Parents and Senior Citizens Rules, 2009". Similarly, UT Administration has framed its Rules called "The Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009". In the Haryana Rules as well, the word 'eviction' is has not been used, just like in the Punjab rules.

33. However, the Chandigarh Rules are unlike those of Punjab and Haryana. Rule 20 of the Chandigarh Rules builds the plan of action for protection of life and property of senior citizens and makes provisions for eviction under the rule-making authority conferred by the Central Act. Rule 20(3)(1) inserted by notification dated 28.03.2014 and published in the Chandigarh Government Gazette dated 01.04.2014 lays down the procedure for 'eviction' from property/residential building of Senior Citizen/Parent/s. Rule 20(3)(2) empowers the Maintenance Tribunal-cum-District Magistrate, UT Chandigarh to pass an 'eviction order' and the following sub rule (3) lays down the procedure for enforcement of orders, but we are also not presently dealing with the Chandigarh Rules, as the instant case is confined

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to the law in the State of Punjab with reference to the Central Act. Haryana has been called in to assist the Court due to similarity of format with the Punjab scheme broken in three parts, that is, the Central Act, the State rules and the Action Plans. The Chandigarh rules are similar to the Delhi rules. Therefore, judgments arising from these rules, both from our Court and the Delhi High Court are distinguishable in law and cannot be applied ipso facto to Punjab and Haryana.

34. The Action Plan formulated under the Punjab Act and Rule 23 of the 2012 Rules was promulgated on 27.11.2014 though it was published in the Punjab Government Gazette Part I on 13.03.2015 and the Action Plan came into force from the date of its issuance i.e. from the date of notification. Here for the first time, the procedure for 'eviction' has been laid down and for its enforcement. Clauses 1, 2 & 3 of the Punjab Action Plan are reproduced below for ready reference:

> 1. Procedure for eviction from property/residential building of Senior Citizens/ parent:
>
> (i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act,2007) regarding life and property of Senior Citizens by different Department/Agencies i.e. Social security, Sub Divisional Magistrate, Police Department, NGOs/Social Worker, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate of the concerned district for further action.
>
> (ii) The District Magistrate shall immediately forward such complaints/ applications to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.

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(iii) The Sub Divisional Magistrates shall submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application,

(iv) If the District magistrate is of opinion that any son or daughter or legal heir of a senior citizens/ parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior Citizens Act 2007, and that they should be evicted, the District Magistrate shall issue in the manner hereinafter provided notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The Notice shall:-

(a) Specify the ground on which the order of eviction is proposed to be made; and

(b) Require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(c) The District Magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given/served to all persons concerned.

2. Eviction Order from property/residential building of Senior Citizens/Parents:

(i) If, after considering the cause, if any, shown by any persons in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being

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heard, the District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other officer dully authorized may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;

(ii) The District Magistrate may also associate NGOs/ Voluntary organizations/ social workers working for the welfare of senior citizens for the enforcement of order;

3. Enforcement of Orders:

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the District Magistrate or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in Question and take possession.

(ii) The District Magistrate shall have powers to enforce the eviction orders with Police help.

(iii) The District Magistrate will further handover the property/premises in question to the concerned Senior Citizens/Parents;

(iv) The District Magistrate, shall forward monthly repost of such cases to the Director, Social Security Department, Punjab by 7th of the following month for review of such cases in the State Council for Senior Citizens constituted under "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007" and Rules of 2012 framed under the said Act under the Chairmanship of the Principal Secretary, Social Security Department, Punjab."

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35. This Action Plan draws its strength from section 22(1) & (2) of the MWPSC Act and from Rule 23 of the 2012 Rules. Neither of which sections or its sub-sections deals with 'eviction' or mentions the word or explains the legislative meaning of the expression 'life and property' in the context of eviction, notwithstanding the same applies to maintenance claims.

Stand of the Union of India in its short affidavit.

36. The Union of India has filed a short reply dated 13.09.2018 supported by an affidavit of Shri A.P.Gupta, Under Secretary to the Government of India, Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, Shastri Bhawan, New Delhi. It has been filed avowedly for the assistance of the Court on the issue of validity of the Action Plan of Punjab as it was called for by the Court to know what the stand of the central Government is; whether it goes beyond the Act and the Constitution. In paragraph 6, the Ministry avers from a reading of the Punjab Rules and the provisions of the Action Plan that although the latter purports to be in compliance of the Act and Rules of Punjab Government and beneficial to the senior citizens, it is not in conformity with the MWPSC Act or Rules made there under, as no such eviction is contemplated by the parent Act. It has been categorically averred in this paragraph, that apart from the above statement, the MWPSC Act does not contemplate grant of powers of eviction to the District Magistrate or any other authority purporting to act pursuant to any application received by it. The Union of India is on affidavit to state in paragraph 7 that the provisions in the Action Plan issued by the Punjab Government empowering eviction from property appears to go beyond the scope of the Act and Rules made by the Punjab Government itself. This is a significant assertion by the Central

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Government representing the will of Parliament. In no other case brought to my notice has such an affidavit come on record in this Court. Hence, all precedents have to be carefully reexamined for their ratio decidendi which judgments have been delivered post promulgation of the Action Plan. The Union of India is led by Mr. Satya Pal Jain, Senior Advocate and Additional Solicitor General of India, who has addressed arguments in support of the legal proposition that: eviction of a family member is not contemplated in the Act of Parliament nor are such powers delegated to the State Government or the District Magistrate to evict person/s. Mr. Jain has submitted that eviction can take place only in a civil court or under any other law, besides the MWPSC Act. Mr. Anupam Gupta and Mr. Jain are on the same page on this crucial point. I could conclude the case on the stand of the Central Government to hold that eviction from the window of the Action Plan is not legally tenable. But that would be an incomplete determination of the large number of issues raised and would be in abdication of authority to decide which I am bound to prevent, by deciding as best my limits allow. But if I do not, then I would be far from doing justice in a complex matter involving constitutional and property right principles in unchartered territory. There is no direct precedent available for guidance on the validity and *vires* of the Punjab Action Plan in the face of the categorical stand of those who represent the Union, of which I can seek help to hold as to whether the District Magistrate, Patiala acting as a Maintenance Tribunal has power to evict person and take possession of property and direct the petitioner to vacate the premises and hand it over to the third respondent acting under the Punjab Action Plan, and to do so only because the third respondent holds the property at Nasirpur Farm in her name coming from

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her late husband, when the marriage was arranged as an alliance by the respective parents; the parties falling apart after the untimely death of the son and the civil litigation pending adjudication and instituted by both the parties at Patiala before the Action Plan came into force. This is only the side view mirror and the court has still to look through the windshield to test the *vires* of the Plan.

37. When this matter was taken up on 5.07.2018 for hearing, this Court heard at length Mr. Anupam Gupta, learned senior counsel for the petitioner to formulate three legal issues appearing to arise for determination. My order dated 5.07.2018 reads as follows:

> "During the course of hearing, Mr. Anupam Gupta, learned senior counsel, raised the following arguments:
>
> (i) The action plan is patently ultra *vires* the Parent Act of 2007 and the Rules made thereunder.
>
> (ii) More importantly the action plan and the investiture or conferment of adjudicatory powers in relation to property upon executive officials instead of independent legally trained judicial officers is repugnant to the basic structure of the Constitution and the principles of separation of powers, independence of judiciary, the primacy of the judiciary as part of judicial independence and the concept of principle of rule of law, all of which have been affirmed by leading judgments of the Supreme Court to be an integral or inalienable part of the basic structure of the Constitution. The action plan is, therefore, both unconstitutional in the higher and fundamental sense of that term and illegal in the sense of being ultra *vires* the Parent Act.
>
> (iii) The action plan is repugnant to the basic structure of the Constitution as it strikes at the root of the constitutional scheme of things for any statute or rules or regulations made thereunder which shift the

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> centre of gravity from the courts to the executive and fall foul of everything that we hold dear. This applies as much to the lower judiciary civil courts to regulate normal safeguards as it does to the higher courts of judicial review under the Constitution.
>
> Thus, this Court feels that issues of public importance have arisen with regard to the action plan formulated under Section 22(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with Rule 23 thereof by the State of Punjab for understanding which this Court requires the assistance from Union of India as well as from the States of Punjab and Haryana, as these issues will arise in other cases also.
>
> Accordingly, to examine the validity of the action plan and whether it goes beyond the Act and the Constitution, this Court requests the learned Assistant Solicitor General of India to assist on the Act, the Rules and the Action Plan. This Court also requests the learned Advocate General for the States of Punjab and Haryana to assist regarding the action plan formulated by their respective Governments.
>
> The larger question coming out of the arguments is to determine the rights and obligations with respect to property rights including maintenance and eviction from property whether can be invested in an Executive Officer instead of Judicial Officer (Civil Court).
>
> To be taken up on 16.07.2018 at 2.00 PM.
>
> Though this case relates to the State of Punjab, the State of Haryana is directed to produce its action plan dated 26.05.2015."

38. The reply of the Union of India, referred to above, was filed in pursuance of this order.

39. After the debate at the Bar spread over many hearings, I would re-phrase and condense the three questions framed on 5.7.2018 in one short question which actually emerges for determination and that is:-

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> "Can the Maintenance Tribunal, Punjab evict person under the Punjab Action Plan, 2014 in the name of protection of life and property of senior citizen?"

The submissions of Mr. Anupam Gupta, Senior Advocate.

40. To begin with, Mr. Anupam Gupta reads section 22 of the Central Act in the context of section 2(e) which defines the word "prescribed" to mean "prescribed by rules made by the State Government under this Act;..." The term "prescribed" has been used once in section 22(1) and again in sub-section (2) as "prescribe" in future tense. It is laid down the District Magistrate or the Officer subordinate to him shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed. Accordingly, in sub-section (2) of section 22, the State Government has power to "prescribe" a comprehensive action plan for providing protection of life and property of senior citizens. It is contended that the Punjab Government has not "prescribed" the Action Plan under the Rules and this position none can wriggle out of because of the definition of the word "prescribed" to mean only such things which are prescribed by the Rules. Therefore, according to Mr. Gupta the Action Plan is a mere notification or guidelines or a Government Order/ Office Memorandum independent and isolated from the Act and Rules and even if they are treated as instructions under Article 162 of the Constitution that would not serve the statutory purpose. There would still be limitations placed on the power of the State Government to make the Plan except to have introduced it in the Rules themselves which in any case would be subject to the doctrine of *ultra vires* since the Parent Act, which indisputably

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makes no provision for eviction according to the interpretation of the Union of India itself in its reply.

41. Section 2(e) and section 22 are a formidable conjunction that make for a legal norm which must be preserved, obeyed and carried out by the State Government, to wit, that no one shall be evicted except by the procedure established by law in the Court or Tribunal exercising jurisdiction with due authority to decide the dispute conclusively, this is apart from maintenance issues with which we are not concerned in this case. This concept is anchored in constitutional idealism and the rule of law, submits Mr. Gupta against arbitrary action.

42. The learned senior counsel would argue that any Tribunal vested with judicial powers must be independent of the Executive to render free, impartial and independent judgments. There must be separation of powers in terms of the philosophy enshrined in Article 50 of the Constitution by separation of the judiciary from the executive as one of the significant features guaranteeing the independence of the judiciary in the Directive Principles of State Policy. The Constitution itself mandates a separate judicial hierarchy of courts distinct from the executive. Complicated issues of ownership, title, inheritance and succession rights and permissive user or licence or the lack of them fall in the domain of adjudicatory civil rights triable by civil courts and the basic and cardinal principles attaching to the Transfer of Property Act, The Hindu Succession Act, rights of women etc and governed by the laws of Succession and Inheritance among the Hindus, which can be determined appropriately by the civil courts and not in a summary fashion by the Maintenance Tribunal presided over by an executive officer of the State Government. He submits that right to property

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under Article 300A is the most valuable and important right outside Part III of the Constitution after Chapter IV was added to Part XII making it a constitutional right of superior quality, but lower than fundamental, and other attracting laws to test legality of the Punjab Action Plan.

43. He relies heavily and exhaustively on the K.T.Plantation (P) Ltd. Vs. State of Karnataka, (2011) 9 SCC 1, which judgment of the Supreme Court speaking through K.S.Radhakrishnan, J. is a prelude which for the first time in the history of the Supreme Court threads together Article 300A inserted by the Forty Fourth Amendment, 1978 [deleting Article 19(1)(f)] to make the Supreme Court judgment the main plank and the foremost ground in his challenge to the Punjab Action Plan insofar as eviction is concerned in the context of right to property and dispossession. He submits that the Supreme Court in *K.T.Plantation* transplants Article 300A virtually back in Part III of the Constitution, without actually saying so, by an ingenious process of social engineering and the perception of property in India. This authority is a leading case and the raw material to refine in multiple dimensions of rights in property in the future.

44. He invokes A.V.Dicey's concept of the Rule of Law to submit that we are born as a free Nation into a system of law and the doctrine of "rule of law" propounded in *K.T.Plantation* is a shining lodestar guiding the challenge to the law beyond the traditional grounds of attack to legislation, subordinate legislation, sub-delegation and other lesser species of executive actions involving property rights administered through notifications, sub-rules, instructions and bye-laws etc. In his book, "Introduction to the Law of Constitution (1885)." the Rule of Law according to Dicey means that no

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man is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above the law.

45. Mr. Gupta cites paragraph 211 in *K.T.Plantation* and reads it in conjunction with the exposition of the law by the Supreme Court judgment in 2017 while dealing with the powers of the Collector [equivalent to District Magistrate in Punjab] under section 29 of the Hindu Succession Act, 1956 which "embodies a principle but does provide a procedural mechanism for adjudication upon disputed question of fact" [para.24] in the Supreme Court judgment speaking through Justice D.Y. Chandrachud in Kutchi Lal Rameshwar Ashram Trust Evam Kshetra Trust Vs. Collector Hardiwar, (2017) 16 SCC 418. The Supreme Court held in this binding opinion in para. 25 [quoted below] to urge that the Action Plan which provides eviction by an executive officer is brazenly in violation of Article 300A, which principle is the 'grundnorm', a word coined by jurist Hans Kelsen as the basic, if not fundamental rights of citizens [and of the petitioner and her likes] that are almost fundamental in nature or represent a rule which forms the underlying basis for a legal system and, if not, it would lead to anarchy and the irretrievable breakdown of the constitutional system and the machinery established through a hierarchy of courts of justice with plenary powers and jurisdiction to decide disputes of litigants in a fair, independent and impartial manner. Para. 25 in *Kutchi Lal* contain the following reasoning:-

> "25. The principle that the law does not readily accept a claim to escheat and that the onus rests heavily on the person who asserts that an individual has died intestate, leaving no legal heir, qualified to succeed to the property, is founded on a sound rationale. Escheat is a doctrine which recognises the state as a paramount sovereign in whom property would vest only upon a clear and established case of a failure of heirs.

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> This principle is based on the norm that in a society governed by the rule of law, the court will not presume that private titles are overridden in favour of the state, in the absence of a clear case being made out on the basis of a governing statutory provision. **To allow administrative authorities of the state – including the Collector, as in the present case – to adjudicate upon matters of title involving civil disputes would be destructive of the rule of law. The Collector is an officer of the state. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes**. In contrast, a civil court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the court is taken away, either expressly or by necessary implication, by statute. In holding that the Collector acted without jurisdiction in the present case, it is not necessary for the court to go as far as to validate the title which is claimed by the petitioner to the property. The court is not called upon to decide whether the possession claimed by the trust of over forty-five years is backed by a credible title**. The essential point is that such an adjudicatory function could not have been arrogated to himself by the Collector. Adjudication on titles must follow recourse to the ordinary civil jurisdiction of a court of competent jurisdiction under Section 9 of the Code of Civil Procedure 1908**."

46. This passage resonates damagingly through the veins of the Action Plan and its scheme of eviction of persons belonging to the family of the senior citizen in an abbreviated and brutally summary manner. While analyzing the provisions of the 2007 Act, the petitioner has pleaded on pages 20 to 22 of the petition as follows:

> "In the statement of Objects and Reasons of the 2007 Act, it has been specifically observed that though the parents can claim maintenance under the provisions of Code of Criminal Procedure, 1973, but the procedure is both, time consuming as well as expensive, therefore, there is a need to

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have simple, inexpensive and speedy provisions to claim maintenance. It needs to be highlighted here that there is no mention therein of providing any remedy of eviction through the mechanism evolved under the Act. Therefore, it can be clearly inferred that the 2007 Act primarily aims to provide an alternative mechanism for seeking maintenance to the Senior Citizens and does not, either expressly or impliedly, provide for mechanism for eviction.

The matter can be examined from another point of view that the 2007 Act provides for an exhaustive mechanism to the Senior Citizens for seeking maintenance through the process of 'Maintenance Tribunals'. Section 8(2) of the Act provides the Tribunal shall have all the powers of a Civil Court for taking evidence on oath and enforcing the attendance of witnesses etc. and shall be deemed to a Civil Court for all purposes of Section 195 of Chapter XXVI of the Code of Criminal Procedure, 1973. Further, Section 9(2) of the Act further provides where it appears to the Tribunal that as a result of any decision of competent civil court, any order passed by it should be cancelled or varied, it shall cancel or vary the order, as the case may be. Since, none of the provisions of the Act refers to eviction proceedings being carried out by authorities under the Act, it does not provide for conferring of any such powers upon them. As a result thereof, a person against whom eviction proceedings have been initiated is at a more disadvantageous position as compared to a person against whom proceedings for maintenance have been initiated as the latter would still get a chance to lead evidence, oral as well as documentary, to defend the claim of other party. Further, the order of maintenance passed by the Tribunal, which does not have an irreversible or irreparable effect, can still be varied or cancelled under Section 9 of the Act, whereas on the contrary, an order of eviction passed by the District Magistrate exercising powers under the Action Plan, which has an irreversible, irreparable and permanent effect, can neither be varied or cancelled and is not subject to the decision by the

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> any competent civil court. Besides, there is no remedy of appeal provided against an order of eviction passed by the District Magistrate under the Action Plan, whereas, an order of grant of maintenance is appealable before the appellate Tribunal under Section 19. In other words, order passed by an authority exercising powers under the 'Action Plan' has more serious and damaging consequences than an order passed by an authority exercising powers under the 'Act' itself, which defeats logic or rationale. The same cannot be said to be the intention of the legislature. The State Government clearly exceeded its jurisdiction by conferring rights under the delegated legislation which are not provided under the parent Act. Incorporation of such provisions under the Action Plan has resulted in discriminatory treatment to person facing eviction proceedings under the Action Plan in comparison to the person facing maintenance proceedings under the Act."

47. Mr. Gupta submits that findings of fact can be returned most appropriately by a court of law if the range is large touching upon legal principles and not by the District Magistrate acting as a Maintenance Tribunal and make it the basis of eviction without a full and complete understanding of the competing rights and interest of parties on property rights, which is the story that zimni orders and the impugned order tells. The complexities of law, such as the nature of self acquired property or ancestral property in the Hindu Mitakshara personal law, HUF, succession, inheritance, women's rights to property, rights of Class I heirs, rule of possession by birth, allocation of parental property, joint family property and coparcenaries etc. deserve not to be left to the summary procedure under the Action Plan in the hands of the executive authority of the District Magistrate, unless we live in a police State and are proud of it in upholding the hateful principle that anyone can be thrown out at anytime from

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anywhere. If the elected parliamentarians representing the will of the nation did not contemplate investing the extreme power of eviction in the District Magistrate, I dare say, none can be inferred by necessary implication from the Act or accepted as duly conferred by a subordinate legislation or a sub-subordinate notification and at least not in the manner done by the Punjab Government through the aegis of the three material clauses of the Action Plan [1 to 3] without any express statutory conferment of power, protection, backing or support in the principal Act of Parliament and to justify the Punjab rules, 2012 framed under the MWPSC Act, which also do not talk of eviction. The Punjab Action Plan is clearly an afterthought and a slipshod result of purported and rash compliance of Court directions in 2014 in *Justice Shanti Sarup Dewan* to the Union Territory case pervading in principle to the two States to promptly act under section 22 (2) of the Act, a duty which hadn't been performed since 2007 as far as CAP is concerned. Also a duty which was deferred in rule 23 of the Punjab Rules, 2012.

48. If the Comprehensive Action Plan (CAP) was built into the Punjab rules in 2012, as wisely done by the Chandigarh Administration under the control and guidance of the Central Government and the Government of Delhi, I might have said, the case may have taken an altogether different turn, confined as I am presently only testing the powers of eviction in the Action Plan born from a foster father and mother but nicknamed under section 22 (2) of the Act as the CAP. The Action Plan has not been "prescribed" under the rules, 2012. When the judgment in *Justice Shanti Sarup* case came to be decided, all the three Action Plans were yet to see the light of day. It was available to the State of Punjab to have amended

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the rules to incorporate the comprehensive action plan therein. Chandigarh Administration followed that legal path.

49. In the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the District Magistrate orders the eviction of unauthorized occupant, but the MWPSC Act does not deal with private property. While dealing with private title and rules of succession and inheritance at the same time calls for a closer judicial scrutiny which cannot possibly be achieved summarily through powers of eviction conferred on executive authorities in the Action Plan granted for the first time by executive action. What the Legislature can do for empowering eviction from property, the executive cannot be seen to do so, through sub-delegation of powers by the delegate of the State Government without there being any guidelines on the exercise of power. This is an anomaly in the MWPSC Act. Section 27 bars the jurisdiction of the civil courts by prescribing as follows: *"No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act."* When eviction is not part of the paraphernalia in the Central Act, as the Union of India says emphatically, I fail to see how the jurisdiction of the civil court is barred especially in a case of summary eviction when complex rights to property are involved which may require full dress adjudication. The bar certainly operates on maintenance claims which are of urgent nature and speedy relief is required to save a senior citizen in distress. But at the same time, the petitioner's rights coming through her late husband as his Class I heir, the only son of the third respondent, may not be bartered away by an executive officer susceptible to many unseen pressures in a summary

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proceeding, so long as certain rights or a semblance of rights are traceable to law. However, winning or losing litigation is a matter best left to the judicial process of the courts to consider, decide and conclude on evidence and proof. The Tribunal under the Act has even the jurisdiction to take cognizance *suo motu* but this is properly confined to maintenance rights where time can be the essence. Section 7 of the Act mandates:

> "**7. Constitution of Maintenance Tribunal —** (*1*) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5."

50. As I see, the Act is maintenance centric throughout the enactment which duty is salutary and pious of the son, daughter and family members as defined in section 2 (a) towards senior citizens, father and mother, biological or adoptive . On property rights, the Act contains the very beneficial provision in section 23 to declare transfer of property by gift or otherwise to a family member or relative void in certain circumstances. However, the question does not arise for determination in this case since there has been no transfer of property to the petitioner or that afterword the obligated person has failed and neglected to maintain her mother-in-law. It is not disputed that they both are affluent persons with a retinue of servants caring for them.

K.T.Plantation case

51. Again relying on *K.T.Plantation* judgment, Mr. Gupta contends that concept of 'rule of law' stands extended and has become a part of basic structure while dealing with rights of citizens over private property.

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Therefore, even ordinary legislation can be challenged on the basic structure doctrine and the rule of law. In *K.T.Plantation* and in Madras Bar Association Vs. Union of India & Another, (2014) 10 SCC 1 cases [the latter case is discussed below after extracting relevant passages from the former], the Supreme Court extended the doctrine of basic structure to ordinary legislation as well. While submitting that in *K.T.Plantation* case, the Supreme Court extended the principle for the first time and, therefore, it is a landmark judgment and the turning point on rights in private property. Mr. Gupta referred to several passages from *K.T.Plantation* to justify his submissions. These are culled out by him and are reproduced to deal with the drift of his arguments:

> "189. … In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300 A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.
>
> 190. Article 300 A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300 A Parliament has only borrowed from Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.
>
> 191. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of

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the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.

xx xx xx

209. Statutes are many which though deprives a person of his property, have the protection of Article 30(1A), Article 31A, 31B, 31C and hence immune from challenge under Article 19 or Article 14. On deletion of Article 19(1(f) the available grounds of challenge are Article 14, the basic structure and the rule of law, apart from the ground of legislative competence. In I.R. Coelho's case (supra), basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the court held that statutes mentioned in the IXth Schedule are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered, by the IXth Schedule.

210. The Acquisition Act, it may be noted, has not been included in the IXth Schedule but since the Act is protected by Article 31A, it is immune from the challenge on the ground of violation of Article 14, but in a given case, if a statute violates the rule of law or the basic structure of the Constitution, is it the law that it is immune from challenge under Article 32 and Article 226 of the Constitution of India?

211. Rule of law as a concept finds no place in our Constitution, but has been characterized as a basic feature of our Constitution which cannot be abrogated or destroyed even by the Parliament and in fact binds the Parliament. In Kesavanda Bharati Vs. State of Kerala, (1973) 4 SCS 225, this Court enunciated rule of law as one of the most important aspects of the doctrine of basic structure. Rule of law affirms parliament's supremacy while at the same time denying it sovereignty over the Constitution.

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212. Rule of law can be traced back to Aristotle and has been championed by Roman jurists; medieval natural law thinkers; Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu, Dicey etc. Rule of law has also been accepted as the basic principle of Canadian Constitution order. Rule of law has been considered to be as an implied limitation on Parliament's powers to legislate.

213. In Manitoba Language Rights, (1985) 1 SCR 721, the Supreme Court of Canada described the constitutional status of the rule of law as follows:

> "The Constitution Act, 1982 ... is explicit recognition that "the rule of law is a fundamental postulate of our constitutional structure." The rule of law has always been understood as the very basis of the English Constitution characterising the political institutions of England from the time of the Norman Conquest. It becomes a postulate of our own constitutional order by way of the preamble to the Constitution Act, 1982 and its implicit inclusion in the preamble to the Constitution Act, 1867 by virtue of the words "with a Constitution similar in principle to that of the United Kingdom."

Additional to the inclusion of the rule of law in the preamble of the Constitution Acts of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. The Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by the rule of law. While this is not set out in a specific provision, the principle of the rule of law is clearly a principle of our Constitution."

214. In Re: Resolution to Amend the Constitution (1981) 1 SCR 753, the Supreme Court of Canada utilized the principle of rule of law to uphold legislation, rather than to strike it

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down. The Court held that the implied principles of the Constitution are limits on the sovereignty of Parliament and the provincial legislatures.

215. The Court reaffirmed this conclusion later in OPSEU Vs. Ontario (A.G.) (1987) 2 SCR 2. This was a case involving a challenge to Ontario legislation restricting the political activities of civil servants in Ontario. Although the Court upheld the legislation, Beetz. J described the implied limitations in the following terms:

> "There is no doubt in my mind that the basic structure of our Constitution, as established by the Constitution Act, 1867, contemplates the existence of certain political institutions, including freely elected legislative bodies at the federal and provincial levels. In the words of Duff C.J. in Reference re Alberta Statutes "such institutions derive their efficacy from the free public discussion of affairs" and, in those of Abbott J. in Switzman v. Elbling ... neither a provincial legislature nor Parliament itself can "abrogate this right of discussion and debate." Speaking more generally, I hold that neither Parliament nor the provincial legislatures may enact legislation the effect of which would be to substantially interfere with the operation of this basic constitutional structure."

216. The Canadian Constitution and Courts have, therefore, considered the rule of law as one of the "basic structural imperatives" of the Constitution. Courts in Canada have exclusively rejected the notion that only "provisions" of the Constitution can be used to strike down legislation and comes down squarely in favour of the proposition that the rule of law binds legislatures as well as governments.

217. The Rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine rule of law so also at times arbitrariness, proportionality, unreasonableness etc., but such violations

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may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa. Any law which, in the opinion of the Court, is not just, fair and reasonable, is not a ground to strike down a Statute because such an approach would always be subjective, not the will of the people, because there is always a presumption of constitutionality for a statute.

218. The Rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. Rule of law as an overarching principle can be applied by the constitutional courts, in rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice.

219. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful. Let the message, therefore, be loud and clear, that rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300A.

220. Deprivation of property may also cause serious concern in the area of foreign investment, especially in the context of International Law and international investment agreements. Whenever, a foreign investor operates within the territory of a host country the investor and its properties are subject to the legislative control of the host country, along with the international treaties or agreements. Even, if the foreign investor has no fundamental right, let them know, that the rule of law prevails in this country.

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221. We, therefore, answer the reference as follows:

x x x x

(e) Public purpose is a pre-condition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

(f) Statue, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed.**"**

NTT & NCLT cases of the Constitution Benches of the Supreme Court.

52. He relies on the observations of the Supreme Court in Madras Bar Association Vs. Union of India & another, [2010] (supra, National Company Law Tribunal case) Khehar J. speaking for the Court in Madras Bar Association Vs. Union of India, (2014) 10 SCC 1 in paragraphs relevant to the subject matter, as per Mr. Gupta, are referred to. He reads paragraphs 107, 108, 126, 128, 130, 131 to 139 from the report as extracted below:

"107. In Union of India Vs. Madras Bar Association, (2010) 11 SCC 1, all the conclusions/propositions narrated above, were reiterated and followed, whereupon the fundamental requirements, which need to be kept in mind while transferring adjudicatory functions from courts to tribunals, were further crystalised. It came to be unequivocally recorded that tribunals vested with judicial power (hitherto before vested in, or exercised by courts), should possess the same independence, security and capacity, as the courts which the tribunals are mandated to substitute. The Members of the tribunals discharging judicial functions, could only be drawn from sources possessed of expertise in law, and competent to discharge judicial functions. Technical Members can be appointed to tribunals where technical expertise is essential

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for disposal of matters, and not otherwise. Therefore it was held, that where the adjudicatory process transferred to tribunals, did not involve any specialized skill, knowledge or expertise, a provision for appointment of Technical Members (in addition to, or in substitution of Judicial Members) would constitute a clear case of delusion and encroachment upon the independence of the judiciary, and the "rule of law". The stature of the members, who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. In other words, if the jurisdiction of the High Court was transferred to a tribunal, the stature of the members of the newly constituted tribunal, should be possessed of qualifications akin to the judges of the High Court. Whereas in case, the jurisdiction and the functions sought to be transferred were being exercised/performed by District Judges, the Members appointed to the tribunal should be possessed of equivalent qualifications and commensurate stature of District Judges. The conditions of service of the members should be such, that they are in a position to discharge their duties in an independent and impartial manner. The manner of their appointment and removal including their transfer, and tenure of their employment, should have adequate protection so as to be shorn of legislative and executive interference. The functioning of the tribunals, their infrastructure and responsibility of fulfilling their administrative requirements ought to be assigned to the Ministry of Law and Justice. Neither the tribunals nor their members, should be required to seek any facilities from the parent ministries or department concerned. Even though the legislature can reorganize the jurisdiction of judicial tribunals, and can prescribe the qualifications/eligibility of members thereof, the same would be subject to "judicial review" wherein it would be open to a court to hold, that the tribunalization would adversely affect the adjudicatory standards, whereupon it would be open to a court to interfere therewith. Such an exercise would naturally be, a part of the checks and balances measures, conferred by the Constitution

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on the judiciary, to maintain the rule of "separation of powers" to prevent any encroachment by the legislature or the executive.

108. The position of law summarized in the foregoing paragraph constitutes a declaration on the concept of the "basic structure", with reference to the concepts of "separation of powers", the "rule of law", and "judicial review". Based on the conclusions summarized above, it will be possible for us to answer the first issue projected before us, namely, whether "judicial review" is a part of the "basic structure" of the Constitution. The answer has inevitably to be in the affirmative. From the above determination, the petitioners would like us to further conclude, that the power of "judicial review" stands breached with the promulgation of the NTT Act. This Court in Minerva Mills Ltd. Vs. Union of India, (1980) 3 SCC 625 held, that it should not be taken, that an effective alternative institutional mechanism or arrangement for "judicial review" could not be made by Parliament. The same position was reiterated in S.P. Sampath Kumar Vs. Union of India, (1987) 1 SCC 124, namely, that "judicial review" was an integral part of the "basic structure" of the Constitution. All the same it was held, that Parliament was competent to amend the Constitution, and substitute in place of the High Court, another alternative institutional mechanism (court or tribunal). It would be pertinent to mention, that in so concluding, this Court added a forewarning, that the alternative institutional mechanism set up by Parliament through an amendment, had to be no less effective than the High Court itself. In L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261, even though this Court held that the power of "judicial review" over legislative action vested in High Courts, was a part of the "basic structure", it went on to conclude that "ordinarily" the power of High Courts to test the constitutional validity of legislations could never be ousted. All the same it was held, that the powers vested in High Courts to exercise judicial superintendence over decisions of all courts and tribunals

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within their respective jurisdictions, was also a part of the "basic structure" of the Constitution. The position that Parliament had the power to amend the Constitution, and to create a court/tribunal to discharge functions which the High Court was discharging, was reiterated, in Union of India Vs. Madras Bar Association case (supra). It was concluded, that the Parliament was competent to enact a law, transferring the jurisdiction exercised by High Courts, in regard to any specified subject, to any court/tribunal. But it was clarified, that Parliament could not transfer power vested in the High Courts, by the Constitution itself. We therefore have no hesitation in concluding, that appellate powers vested in the High Court under different statutory provisions, can definitely be transferred from the High Court to other courts/tribunals, subject to the satisfaction of norms declared by this Court. Herein the jurisdiction transferred by the NTT Act was with regard to specified subjects under tax related statutes. That, in our opinion, would be permissible in terms of the position expressed above. Has the NTT Act transferred any power vested in courts by the Constitution? The answer is in the negative. The power of "judicial review" vested in the High Court under Articles 226 and 227 of the Constitution, has remained intact. This aspect of the matter, has a substantial bearing, to the issue in hand. And will also lead to some important inferences. Therefore, it must never be overlooked, that since the power of "judicial review" exercised by the High Court under Articles 226 and 227 of the Constitution has remained unaltered, the power vested in High Courts to exercise judicial superintendence over the benches of the NTT within their respective jurisdiction, has been consciously preserved. This position was confirmed by the learned Attorney General for India, during the course of hearing. Since the above jurisdiction of the High Court has not been ousted, the NTT will be deemed to be discharging a supplemental role, rather than a substitutional role. In the above view of the matter, the submission that the NTT Act

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violates the "basic structure" of the Constitution, cannot be acquiesced to.

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126. This Court has declared the position in this behalf in L. Chandra Kumar case (supra) and in Union of India Vs. Madras Bar Association case (supra), that Technical Members could be appointed to the tribunals, where technical expertise is essential for disposal of matters, and not otherwise. It has also been held, that where the adjudicatory process transferred to a tribunal does not involve any specialized skill, knowledge or expertise, a provision for appointment of non-Judicial Members (in addition to, or in substitution of Judicial Members), would constitute a clear case of delusion and encroachment upon the "independence of judiciary", and the "rule of law". It is difficult to appreciate how Accountant Members and Technical Members would handle complicated questions of law relating to tax matters, and also questions of law on a variety of subjects (unconnected to tax), in exercise of the jurisdiction vested with the NTT. That in our view would be a tall order. An arduous and intimidating asking. Since the Chairperson/ Members of the NTT will be required to determine "substantial questions of law", arising out of decisions of the Appellate Tribunals, it is difficult to appreciate how an individual, well-versed only in accounts, would be able to discharge such functions. Likewise, it is also difficult for us to understand how Technical Members, who may not even possess the qualification of law, or may have no experience at all in the practice of law, would be able to deal with "substantial questions of law", for which alone, the NTT has been constituted.

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128. There seems to be no doubt, whatsoever, that the Members of a court/tribunal to which adjudicatory functions are transferred, must be manned by judges/members whose stature and qualifications are commensurate to the court from which the adjudicatory process has been transferred. This

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position is recognized the world over. Constitutional conventions in respect of Jamaica, Ceylon, Australia and Canada, on this aspect of the matter have been delineated above. The opinion of the Privy Council expressed by Lord Diplock in Hind case (supra), has been shown as being followed in countries which have constitutions on the Westminster model. The Indian Constitution is one such Constitution. The position has been clearly recorded while interpreting constitutions framed on the above model, namely, that even though the legislature can transfer judicial power from a traditional court, to an analogous court/tribunal with a different name, the court/tribunal to which such power is transferred, should be possessed of the same salient characteristics, standards and parameters, as the court the power whereof was being transferred. It is not possible for us to accept, that Accountant Members and Technical Members have the stature and qualification possessed by judges of High Courts.

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130. We would now deal with the submissions advanced by the learned counsel for the petitioners in respect of Section 7 of the NTT Act. It seems to us, that Section 7 has been styled in terms of the decision rendered by this Court in L. Chandra Kumar case (supra). Following the above judgment for determining the manner of selection of the Chairperson and Members of the NTT, is obviously a clear misunderstanding of the legal position declared by this Court. It should not have been forgotten, that under the provisions of the Administrative Tribunals Act, 1985, which came up for consideration in L. Chandra Kumar case (supra), the tribunals constituted under the said Act, are to act like courts of first instance. All decisions of the tribunal are amenable to challenge under Articles 226/227 of the Constitution before, a division bench of the jurisdictional High Court. In such circumstances it is apparent, that tribunals under the Administrative Tribunals Act, 1985, were subservient to the jurisdictional High Courts. The manner of selection, as

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suggested in L. Chandra Kumar case (supra) cannot therefore be adopted for a tribunal of the nature as the NTT. Herein the acknowledged position is that the NTT has been constituted as a replacement of High Courts. The NTT is, therefore, in the real sense a tribunal substituting the High Courts. The manner of appointment of Chairperson/Members to the NTT will have to be, by the same procedure (or by a similar procedure), to that which is prevalent for appointment of judges of High Courts. Insofar as the instant aspect of the matter is concerned, the above proposition was declared by this Court in Union of India Vs. Madras Bar Association case (supra), wherein it was held, that the stature of the Members who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. Accordingly, if the jurisdiction of the High Courts is being transferred to the NTT, the stature of the Members of the tribunal had to be akin to that of the judges of High Courts. So also the conditions of service of its Chairperson/Members. And the manner of their appointment and removal, including transfers. Including, the tenure of their appointments.

131. Section 7 cannot even otherwise, be considered to be constitutionally valid, since it includes in the process of selection and appointment of the Chairperson and Members of the NTT, Secretaries of Departments of the Central Government. In this behalf, it would also be pertinent to mention, that the interests of the Central Government would be represented on one side, in every litigation before the NTT. It is not possible to accept a party to a litigation, can participate in the selection process, whereby the Chairperson and Members of the adjudicatory body are selected. This would also be violative of the recognized constitutional convention recorded by Lord Diplock in Hinds case (supra), namely, that it would make a mockery of the constitution, if the legislature could transfer the jurisdiction previously exercisable by holders of judicial offices, to holders of a new court/tribunal (to which some different name was attached) and to provide that persons holding the new judicial offices,

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should not be appointed in the manner and on the terms prescribed for appointment of Members of the judicature. For all the reasons recorded hereinabove, we hereby declare Section 7 of the NTT Act, as unconstitutional.

132. Insofar as the validity of Section 8 of the NTT Act is concerned, it clearly emerges from a perusal thereof, that a Chairperson/Member is appointed to the NTT, in the first instance, for a duration of 5 years. Such Chairperson/Member is eligible for reappointment, for a further period of 5 years. We have no hesitation to accept the submissions advanced at the hands of the learned counsel for the petitioners, that a provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT. Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent understanding. We are satisfied, that the above provision would undermine the independence and fairness of the Chairperson and Members of the NTT. Since the NTT has been vested with jurisdiction which earlier lay with the High Courts, in all matters of appointment, and extension of tenure, must be shielded from executive involvement. The reasons for our instant conclusions are exactly the same as have been expressed by us while dealing with Section 5 of the NTT Act. We therefore hold that Section 8 of the NTT Act is unconstitutional.

133. Sections 5, 6, 7, 8 and 13 of the NTT Act have been held by us (to the extent indicated hereinabove) to be illegal and unconstitutional on the basis of the parameters laid down by decisions of constitutional benches of this Court and on the basis of recognized constitutional conventions referable to constitutions framed on the Westminster model. In the absence of the aforesaid provisions which have been held to be unconstitutional, the remaining provisions have been rendered otiose and worthless, and as such, the provisions of the NTT Act, as a whole, are hereby set aside.

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Conclusions:

134. (i) The Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the "basic structure" of the Constitution.

135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.

136. (iii) The "basic structure" of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.

137. (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.

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139. (vi) Examined on the touchstone of conclusions (iii) and (iv) above, Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional."

53. While dealing with the constitutional validity of the National Company Law Tribunal (NCLT case) in Union of India Vs. R. Gandhi,

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President, Madras Bar Association & Madras Bar Association, (2010) 11 SCC 1 and inclusion of Accountant Members and Technical Members in the Tribunal, and other constitutional issues were crystallized in paragraph 35 to the effect:

> "(i) To what extent the powers and judiciary of High Court (excepting judicial review under Article 226/227 be transferred to Tribunals?
> (ii) Is there a demarcating line for the Parliament to vest intrinsic judicial functions traditionally performed by courts in any Tribunal or authority outside the judiciary?
> (iii) Whether the "wholesale transfer of powers" as contemplated by the Companies (Second Amendment) Act, 2002 would offend the constitutional scheme of separation of powers and independence of judiciary so as to aggrandize one branch over the other? Therefore the Three Judge Bench, by order dated 13.5.2007 directed the appeals to be heard by a Constitution Bench, observing that as the issues raised are of seminal importance and likely to have serious impact on the very structure and independence of judicial system?"

The Supreme Court per R.V.Raveendran, J. in paragraphs 90, 94 to 96 & 101, 106, 109, 110, 113, 114 & 115 laid down the following principles, observing :-

> "90. But when we say that Legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of judiciary and keeping in view the principles of Rule of Law and separation of powers. If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with courts. If the Tribunals are intended to serve an area which requires specialized knowledge or expertise, no doubt there can be Technical Members in addition to Judicial Members. Where

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however jurisdiction to try certain category of cases are transferred from Courts to Tribunals only to expedite the hearing and disposal or relieve from the rigours of the Evidence Act and procedural laws, there is obviously no need to have any non-judicial Technical Member. In respect of such Tribunals, only members of the Judiciary should be the Presiding Officers/members. Typical examples of such special Tribunals are Rent Tribunals, Motor Accident Tribunals and Special Courts under several Enactments. Therefore, when transferring the jurisdiction exercised by Courts to Tribunals, which does not involve any specialized knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the Judiciary and Rule of Law and would be unconstitutional.

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94. We may examine this question with reference to the company jurisdiction exercised by the High Court for nearly a century being shifted to a tribunal on the ground that tribunal consisting of a judicial and technical members will be able to dispose of the matters expeditiously and that the availability of expertise of the technical members will facilitate the decision making to be more practical, effective and meaningful. Does this mean that the Legislature can provide for persons not properly qualified to become members? Let us take some examples. Can the legislature provide that a law graduate with a masters' degree in company law can be a judicial member without any experience as a lawyer or a judge? Or can the legislature provide that an Upper Division Clerk having fifteen years experience in the company law department but with a Law Degree is eligible to become a Judicial Member? Or can the legislature provide that a `social worker' with ten years experience in social work can become a technical member? Will it be beyond scrutiny by way of judicial review?

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95. Let us look at it from a different angle. Let us assume that three legislations are made in a state providing for constitution of three types of Tribunals: (i) Contract Tribunals; (ii) Real Estate Tribunals; and (iii) Compensation Tribunals. Let us further assume that those legislations provide that all cases relating to contractual disputes, property disputes and compensation claims hitherto tried by civil courts, will be tried by these tribunals instead of the civil courts; and that these tribunals will be manned by members appointed from the civil services, with the rank of Section Officers who have expertise in the respective field; or that a businessman in the case of Contract Tribunal, a Real Estate Dealer in regard to Property Tribunal, and any social worker in regard to compensation Tribunal, having expertise in the respective field will be the members of the Tribunal. Let us say by these legislations, all cases in civil courts are transferred to Tribunal (as virtually all cases in civil courts will fall under one or the other of the three Tribunals). Merely because the Legislature has the power to constitute tribunals or transfer jurisdiction to tribunals, can that be done?

96. The question is whether a line can be drawn, and who can decide the validity or correctness of such action. The obvious answer is that while the Legislature can make a law providing for constitution of Tribunals and prescribing the eligibility criteria and qualifications for being appointed as members, the superior courts in the country can, in exercise of the power of judicial review, examine whether the qualifications and eligibility criteria provided for selection of members is proper and adequate to enable them to discharge judicial functions and inspire confidence.

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101. Independent judicial tribunals for determination of the rights of citizens, and for adjudication of the disputes and complaints of the citizens, is a necessary concomitant of the Rule of Law. Rule of Law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of

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acts of the Government will be decided by Judges who are independent of the Executive. Another facet of Rule of Law is equality before law. The essence of equality is that it must be capable of being enforced and adjudicated by an independent judicial forum. Judicial independence and separation of judicial power from the Executive are part of the common law traditions implicit in a Constitution like ours which is based on the Westminster model.

102. The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution clearly includes a right to have the person's rights, adjudicated by a forum which exercises judicial power in an impartial and independent manner, consistent with the recognized principles of adjudication. Therefore wherever access to courts to enforce such rights is sought to be abridged, altered, modified or substituted by directing him to approach an alternative forum, such legislative act is open to challenge if it violates the right to adjudication by an independent forum. Therefore, though the challenge by MBA is on the ground of violation of principles forming part of the basic structure, they are relatable to one or more of the express provisions of the Constitution which gave rise to such principles. Though the validity of the provisions of a legislative act cannot be challenged on the ground it violates the basic structure of the constitution, it can be challenged as violative of constitutional provisions which enshrine the principles of Rule of Law, separation of power and independence of Judiciary.

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106. We may summarize the position as follows:

(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also

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be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for `Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any

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> encroachment, intentional or unintentional, by either the legislature or by the executive.

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109. A lifetime of experience in administration may make a member of the civil services a good and able administrator, but not a necessarily good, able and impartial adjudicator with a judicial temperament capable of rendering decisions which have to (i) inform the parties about the reasons for the decision; (ii) demonstrate fairness and correctness of the decision and absence of arbitrariness; and (iii) ensure that justice is not only done, but also seem to be done.

110. We may refer to the following words of Bhagwati CJ., in Sampath Kumar (supra):

> "We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must make it clear that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience.

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113. When Administrative Tribunals were constituted, the presence of members of civil services as Technical (Administrative) Members was considered necessary, as they were well versed in the functioning of government departments and the rules and procedures applicable to Government servants. But the fact that senior officers of civil services could function as Administrative Members of Administrative Tribunals, does not necessarily make them

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suitable to function as Technical Members in Company Law Tribunals or other Tribunals requiring technical expertise. The Tribunals cannot become providers of sinecure to members of civil services, by appointing them as Technical Members, though they may not have technical expertise in the field to which the Tribunals relate, or worse where purely judicial functions are involved. While one can understand the presence of the members of the civil services being Technical Members in Administrative Tribunals, or Military Officers being members of Armed Forces Tribunals, or Electrical Engineers being members of Electricity Appellate Tribunal, or Telecom Engineers being members of TDSAT, we find no logic in members of general Civil Services being members of Company Law Tribunals.

114. Let us now refer to the dilution of independence. If any member of the Tribunal is permitted to retain his lien over his post with the parent cadre or ministry or department in the civil service for his entire period of service as member of the Tribunal, he would continue to think, act and function as a member of the civil services. A litigant may legitimately think that such a member will not be independent and impartial. We reiterate that our observations are not intended to cast any doubt about the honesty and integrity or capacity and capability of the officers of civil services in particular those who are of the rank of Joint Secretary or for that matter even junior officers. What we are referring to is the perception of the litigants and the public about the independence or conduct of the Members of the Tribunal. Independence, impartiality and fairness are qualities which have to be nurtured and developed and cannot be acquired overnight. The independence of members discharging judicial functions in a Tribunal cannot be diluted.

115. The need for vigilance in jealously guarding the independence of courts and Tribunals against dilution and encroachment, finds an echo in an advice given by Justice William O. Douglas to young lawyers (The Douglas Letters: Selections from the Private Papers of William Douglas, edited

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by Melvin L. Urofsky - 1987 Edition, Page 162 - Adler and Adler.):

> "...The Constitution and the Bill of Rights were designed to get Government off the backs of people - all the people. Those great documents did not give us the welfare state. Instead, they guarantee to us all the rights to personal and spiritual self- fulfillment.
>
> But that guarantee is not self-executing. As nightfall does not come all at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air - however slightest we become unwitting victims of the darkness."

54. Mr. Gupta then takes the Court to the decision in the NJAC ruling relevant to the subject matter on separation of powers and the rule of law quoting from certain paragraphs, which he argues are relevant in understanding the issue connecting them with the powers of the Maintenance Tribunal which are left unguided in the Action Plan for eviction, in Supreme Court Advocates-on-Record Association & another Vs. Union of India, (2016) 5 SCC 1. Those are reproduced hereafter:

> "365. Mr. Mukul Rohatgi, learned Attorney General for India, repulsed the contentions advanced at the hands of the petitioners, that vires of the provisions of the NJAC Act, could be challenged, on the ground of being violative of the "basic structure" of the Constitution.
>
> 366. The first and foremost contention advanced, at the hands of the learned Attorney General was, that the constitutional validity of an amendment to the Constitution, could only be assailed on the basis of being violative of the "basic structure" of the Constitution. Additionally it was submitted, that an ordinary legislative enactment (like the NJAC Act), could only be assailed on the grounds of lack of legislative competence and/or the violation of Article 13 of

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the Constitution. Inasmuch as, the State cannot enact laws, which take away or abridge rights conferred in Part III of the Constitution, or are in violation of any other constitutional provision. It was acknowledged, that law made in contravention of the provisions contained in Part III of the Constitution, or of any other constitutional provision, to the extent of such contravention, would be void.

367. Insofar as the instant aspect of the matter is concerned, the learned Attorney General, placed reliance on the Indira Nehru Gandhi Vs. Raj Narain, (1975) Supp SCC 1, State of Karnataka v. Union of India, (1977) 4 SCC 608, and particularly to the following observations:

> "238. Mr Sinha also contended that an ordinary law cannot go against the basic scheme or the fundamental backbone of the Centre-State relationship as enshrined in the Constitution. He put his argument in this respect in a very ingenious way because he felt difficulty in placing it in a direct manner by saying that an ordinary law cannot violate the basic structure of the Constitution. In the case of Smt Indira Nehru Gandhi v. Shri Raj Narain such an argument was expressedly rejected by this Court. We may rest content by referring to a passage from the judgment of our learned brother Chandrachud, J., … which runs thus:
>
> > "691. …The constitutional amendments may, on the ratio of the Fundamental Rights case be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the Legislature as defined and specified in Chapter I, Part 11 of the Constitution and (2) it

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> must not offend against the provisions of Articles 13(1) and (2) of the Constitution. 'Basic structure', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features'— this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

376. In addition to the above judgment, reliance was also placed on State of Bihar v. Bal Mukund Sah (2000) 4 SCC 640, wherein a Constitution Bench of this Court, while examining the power of the State legislature, to legislate on the subject of recruitment of District Judges and other judicial officers, placed reliance on the judgment rendered by this Court in the Kesavananda Bharati Vs. State of Kerala, (1973) 4 SCC 225, which took into consideration five of the declared "basic features" of the Constitution, and examined the subject matter in question, by applying the concept of "separation of powers" between the legislature, the executive and the judiciary, which was accepted as an essential feature of the "basic structure" of the Constitution.

379. It needs to be highlighted, that the issue under reference arose on account of the fact, that learned counsel for the petitioners had placed reliance on the judgment of this Court, in the Madras Bar Association Vs. Union of India, (2014) 10 SCC 1, wherein this Court had examined the provisions of the National Tax Tribunal Act, 2005, and whilst doing so, had held the provisions of the above legislative enactment as ultra vires the provisions of the Constitution, on account of their being violative of the "basic structure" of the

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Constitution. It is therefore quite obvious, that the instant contention was raised, to prevent the learned counsel for the petitioners, from placing reliance on the conclusions recorded in the Madras Bar Association case.

380. We have given our thoughtful consideration to the above contentions. The "basic structure" of the Constitution, presently inter alia includes the supremacy of the Constitution, the republican and democratic form of Government, the "federal character" of distribution of powers, secularism, "separation of powers" between the legislature, the executive, and the judiciary, and "independence of the judiciary". This Court, while carving out each of the above "basic features", placed reliance on one or more Articles of the Constitution (sometimes, in conjunction with the preamble of the Constitution). It goes without saying, that for carving out each of the "core" or "basic features/basic structure" of the Constitution, only the provisions of the Constitution are relied upon. It is therefore apparent, that the determination of the "basic features" or the "basic structure", is made exclusively from the provisions of the Constitution. Illustratively, we may advert to "independence of the judiciary" which has been chosen because of its having been discussed and debated during the present course of consideration. The deduction of the concept of "independence of the judiciary" emerged from a collective reading of Articles 12, 36 and 50. It is sometimes not possible, to deduce the concerned "basic structure" from a plain reading of the provisions of the Constitution. And at times, such a deduction is made, from the all- important silences hidden within those Articles, for instance, the "primacy of the judiciary" explained in the Samsher Singh Vs. State of Punjab (1974) 2 SCC 831, Union of India Vs. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 and the Supreme Court Advocates-on-Record Assn. Vs. Union of India, (1993) 4 SCC 441, wherein this Court while interpreting Article 74 along with Articles 124, 217 and 222, in conjunction with the intent of the framers of the

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Constitution gathered from the Constituent Assembly debates, and the conventions adhered to by the political-executive authority in the matter of appointment and transfer of Judges of the higher judiciary, arrived at the conclusion, that "primacy of the judiciary" was a constituent of the "independence of the judiciary" which was a "basic feature" of the Constitution. Therefore, when a plea is advanced raising a challenge on the basis of the violation of the "basic structure" with reference to the "independence of the judiciary", its rightful understanding is, and has to be, that Articles 12, 36 and 50 on the one hand, and Articles 124, 217 and 222 on the other, (read collectively and harmoniously) constitute the basis thereof. Clearly, the "basic structure" is truly a set of fundamental foundational principles, drawn from the provisions of the Constitution itself. These are not fanciful principles carved out by the judiciary, at its own. Therefore, if the conclusion drawn is, that the "independence of the judiciary" has been transgressed, it is to be understood, that rule/principle collectively emerging from the above provisions, had been breached, or that the above Articles read together, had been transgressed.

381. So far as the issue of examining the constitutional validity of an ordinary legislative enactment is concerned, all the constitutional provisions, on the basis whereof the concerned "basic feature" arises, are available. Breach of a single provision of the Constitution, would be sufficient to render the legislation, ultra vires the Constitution. In such view of the matter, it would be proper to accept a challenge based on constitutional validity, to refer to the particular Articles(s), singularly or collectively, which the legislative enactment violates. And in cases where the cumulative effect of a number of Articles of the Constitution is stated to have been violated, reference should be made to all the concerned Articles, including the preamble, if necessary. The issue is purely technical. Yet, if a challenge is raised to an ordinary legislative enactment based on the doctrine of "basic structure", the same cannot be treated to suffer from a legal

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infirmity. That would only be a technical flaw. That is how, it will be possible to explain the observations made by this Court, in the judgments relied upon by the learned counsel for the petitioners. Therefore, when a challenge is raised to a legislative enactment based on the cumulative effect of a number of Articles of the Constitution, it is not always necessary to refer to each of the concerned Articles, when a cumulative effect of the said Articles has already been determined, as constituting one of the "basic features" of the Constitution. Reference to the "basic structure", while dealing with an ordinary legislation, would obviate the necessity of recording the same conclusion, which has already been scripted while interpreting the Article(s) under reference, harmoniously. We would therefore reiterate, that the "basic structure" of the Constitution is inviolable, and as such, the Constitution cannot be amended so as to negate any "basic features" thereof, and so also, if a challenge is raised to an ordinary legislation based on one of the "basic features" of the Constitution, it would be valid to do so. If such a challenge is accepted, on the ground of violation of the "basic structure", it would mean that the bunch of Articles of the Constitution (including the preamble thereof, wherever relevant), which constitute the particular "basic feature", had been violated. We must however credit the contention of the learned Attorney General by accepting, that it would be technically sound to refer to the Articles which are violated, when an ordinary legislation is sought to be struck down, as being ultra vires the provisions of the Constitution. But that would not lead to the inference, that to strike down an ordinary legislative enactment, as being violative of the "basic structure", would be wrong. We therefore find no merit in the contention advanced by the learned Attorney General, but for the technical aspect referred to hereinabove."

55. While discussing the question of separation of powers drawn from the debates of learned men, the Supreme Court in paragraph 119 quoted Justice Sir Abdur Rahim, who was a Judge of the Madras High Court

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(c.1912) and for many years [later Chief Justice] and the President of the Central Legislature expressing his surprise remarking:

> "One word more I have to say in this connection and that is, that with the advent of democracy and freedom, the necessity of this reform has become all the greater. Formerly it was only the district magistrate and a few members of the bureaucratic Government from whom interference with the judiciary was apprehended, but now, I am very sorry to say that even the Ministers in some provinces and members of political parties have begun to interfere with the free administration of justice. Those of you, who may be reading news paper reports of judicial decisions lately, must have been struck with this type of interference which has been under review in the various High Courts lately. In one province we found that in a case pending in a Criminal Court, the Ministry sent for the record and passed an order directing the trying Magistrate to stay proceedings in the case. This was something absolutely unheard of. The matter eventually went up to the High Court and the learned Chief Justice and another Judge had to pass very strong remarks against such executive interference with the administration of justice."

56. The Supreme Court concluded on this aspect in paragraph 121 as follows:

> "121. Based on the consideration recorded in the immediately preceding paragraphs also, it seems to us, that the necessity of making a detailed reference to the Constituent Assembly debates in the Second Judges case, may well have been regarded, as of no serious consequence, whether it was on the subject of appointment of Judges to the higher judiciary, as a component of "independence of the judiciary", or, on the subject of "separation of powers", whereby the judiciary was sought to be kept apart, and separate, from the executive. This Court having concluded, that the principle of "separation of powers" was expressly ingrained in the Constitution, which removes the executive from any role in

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> the judiciary, the right of the executive to have the final word in the appointment of Judges to the higher judiciary, was clearly ruled out. And therefore, this Court on a harmonious construction of the provisions of the Constitution, in the Second and Third Judges cases, rightfully held, that primacy in the above matter, vested with the judiciary, leading to the inference, that the term "consultation" in the provisions under reference, should be understood as giving primacy to the view expressed by the judiciary, through the Chief Justice of India."

Other Case Law relied upon by Mr. Gupta.

57. A piquant situation arose before the Supreme Court in Shri Kumar Padma Prasad Vs. Union of India & others, (1992) 2 SCC 428, in the case where after Warrants of Appointment had been signed by the President and notification appointing 'S' as Judge of the Guwahati High Court was issued, a petition was filed in the Guwahati High Court challenging the selection of 'S' for appointment as Judge of the High Court on the ground that he was not qualified for appointment. The High Court issued interim order directing that Warrants of Appointment shall not be given effect to. That is how the matter reached the Supreme Court. Their Lordships of the Supreme Court speaking through Kuldip Singh, J. went into the entire issue and set aside the Warrants and the appointment on the ground that 'S' had not held judicial office in his career in the Law Department in Mizoram, Assam. 'S' did not possess the qualifications for elevation to the High Court prescribed by Article 217 (2) of the Constitution which requires at least ten years to be held as a judicial office or has been for at least ten years an advocate of a High Court or of two or more such Courts in succession. The Court observed in paragraph 19 that the:-

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"Expression "Judicial Office" has not been defined under the Constitution, nevertheless, it has to be given the meaning in the context of the concept of judiciary as enshrined in the Constitution of India. The constitution seeks to establish an independent judiciary in the country. Article 50 the Constitution gives a mandate that the State shall take steps to separate the judiciary from the executive in the public services of the State. Chapter V and VI in Part VI of the Constitution provide for the High Courts and subordinate courts in the State. The Scheme under the Constitution for establishing an independent judiciary is very clear. Article 236(b) defines 'judicial service' to mean district Judges and Judges subordinate thereto. Under Article 234 Governor of the State makes appointments of persons other than District Judges to the judicial service in accordance with the Rules made by him in consultation with the High Court. Article 235 vests control over district courts and courts subordinate thereto in the High Court. The judicial service whether at the level of district courts or courts subordinate thereto is under the control of the High Court in all respects. The subordinate judiciary which mans the courts subordinate to the district courts consists of judicial officers who are recruited in consultation with the High Court. The district judges are recruited for amongst the members of the bar and by promotion from the subordinate judiciary. The judicial service in a State is distinct and separate from the other services under the executive. The members of the judicial service perform exclusively judicial functions and are responsible for the administration of justice in the State."

58. Still further, in paragraph 20 the Court quoted a passage from Chandra Mohan Vs. State of U.P, AIR 1966 SC 1987 which reads:-

"But the makers of the Constitution also realised that "it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the

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superior Judges. Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Ch. VI of Part VI under the heading "Subordinate Courts". But at the time the Constitution was made, in most of the State the magistracy was under the direct control of the executive. Indeed it is common knowledge that in the pre-independent India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So, article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control."

59. In paragraph 22 it is observed that independence of the judiciary is the basic feature of the Constitution. To achieve that objective there has to be separation of the judiciary from the executive, explaining:-

"The expression "judicial office" in generic sense may include wide variety of offices which are connected with the administration of justice in one way or the other. Under the Criminal Procedure Code 1973 powers of judicial Magistrate can be conferred on any person who holds or has held any office under the Government. Officers holding various posts under the executive are often vested with the Magisterial-powers to meet a particular situation. Did the framers of the constitution had this type of 'offices' in mind when they provided a source of appointment to the high office of a Judge of High Court from amongst the holders of a "judicial office". The answer has to be in the negative. We are of the view that holder of "judicial office" under Article 217 (2) (a) means the person who exercises only judicial functions, determines causes inter-parties and renders decisions in a judicial capacity. He must belong to the judicial service which as a class is free from executive-control and is disciplined to uphold the dignity, integrity and independence of judiciary."

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60. The District Magistrate acting under the Action Plan evicting defendant performs a judicial function [not quasi judicial function] and to that extent holds “judicial office”. He is not free from executive control by virtue of his office. He has neither the experience nor the training of a judicial Magistrate. This is where the words of Justice Abdur Rahim [para.55] spoken decades ago ring the alarm bells and are much truer in today’s milieu with far greater pulls and pressures exerted on the executive officers. The Court has to live in the real world and cannot stay divorced from it.

61. While dealing with the issue of independence, impartiality, fairness and competence of the adjudicating authority in the hands of an executive officer in the matter of eviction, Mr. Gupta contended this a prescription for injustice as it is a judicial function in the hands of an officer/agent of the Government while dealing with private law rights as opposed to public law remedies in enactments, such as, the Public Premises Act etc. He quotes from observations in judicial precedents to submit that:-

> “Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function.” See, Para 21 in I.N.Saksena Vs. State of M.P., (1976) 4 SCC 750.

And;

> “The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which govern the parties and the transactions and require court to give effect to them.” See, Indian Aluminum Co. Vs. State of Kerala, (1996) 7 SCC 637.”

62. The Punjab Action Plan does not lay down guidelines on exercise of power and an unbridled authority cannot be bestowed and approved to be discharged by an executive officer to settle valuable

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actionable rights of parties as opposed to persons who have no semblance of rights to be thrown out. This is in case justice is done and seen to be done. It is no argument to suggest that high executive authority will discharge functions in a judicial manner. The proposition can be properly understood with the help of a Supreme Court judgment I would discuss in the next paragraph.

63. In Delhi Transport Corporation Vs. DTC Mazdoor Congress, 1991 Supp. (1) SCC 600 (CB), the Supreme Court dealt with Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the orders is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution. There is no guideline in the Regulations or in the Delhi Road Transport Authority Act, 1950 as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu thereof can be exercised. The summary power to dismiss is as potent as the summary power to evict especially when power is left in the hands of executive officers in high office. Telling are the scathing observations of P.B.Sawant, J. in his separate, but concurring judgment in the *DTC Mazdoor Congress* case, when His Lordship spoke in the following words:

> "There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may

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be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

64. Then again it is observed in the judgment in the DTC case as follows:

"The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissenting opinion in Moti Ram Deka etc. v. General Manager, N.E.P. Railways, Maligaon, Pandu, etc., [1964] 5 SCR 683 had given vent to it, Das Gupta, J. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148(3) of the Railway Establishment Code, had not supported that view and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the Rule as being void on account of the discrimination it introduced between railway servants and other government servants. The reliance placed on the decision in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., [1959] SCR 279 to support the above theory is also according to me not correct. As has been

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pointed out there, the Commission of Inquiry Act, 1952, the validity of which was challenged on the ground of unguided powers to institute inquiries, was not violative of Article 14 because the long title and Section 3 of the Act had contained sufficient guidelines for exercise of the power. Section 3 has stated that the appropriate government can appoint a Commission of Inquiry only for the purpose of making inquiry into any definite matter of public importance. It is in the context of this guideline in the Act, that it is further stated there that even that power is to be exercised by the government and not any petty official. Hence a bare possibility that the power may be abused cannot per se invalidate the Act itself. The proposition of law stated there is to be read as a whole and not in its truncated form. The authority does not lay down the proposition that even in the absence of guidelines, the conferment of power is valid merely because the power is to be exercised by a high official. It must further be remembered that in this case, the contention was that although the appropriate government was given power to appoint Commission of Inquiry into any definite matter of public importance, the delegation of power was excessive since it was left to the government to decide for itself in each case what constituted such matter. The court repelled the argument by pointing out that "definite matter of public importance" constituted sufficient guideline to the government. It was not, therefore, a case of no guideline but of the absence of details of the guideline.

Of similar nature is the reliance placed on the decision in The Collector of Customs, Madras vs. Nathella Sampathu Chetty & Anr., [1962] 3 SCR 786 for the proposition that the possibility of the abuse of the powers is no ground for declaring the provision to be unreasonable or void. The relevant observations are made while repelling the contention there that the burden thrown under provisions of Section 178A of the Sea Customs Act, 1878 on the possessor of the goods to show that they were not smuggled was violative of

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Article 19(1)(f) and (g) of the Constitution. The observations are as follows:

> "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

The statute there was saved by the provisions of Article 19(6) of the Constitution and was otherwise valid. It was not a case of a provision which was constitutionally invalid being saved by recourse to the spacious assumption of its reasonable exercise in individual cases."

65. I would ask again and again: Can the Maintenance Tribunal evict person in Punjab or Haryana under the Action Plan in the name of protection of life and property of senior citizen. And have such enormous powers been conferred on the Tribunal by any established law or is the Action Plan the established law? The extent to which the State may want to go is its prerogative under section 22 without amending the rules like Delhi

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Government and UT Administration, Chandigarh, but State action must be within the rule of law upholding the position that no person would be condemned without effective hearing on the assertion of his rights. Even if I had wished to lean in favour of the third respondent I am yet faced with a critical substantive right of ejectment brought through executive instructions by Punjab and in the teeth of section 2 (e) and sections 22 (2) & 32(f). No direct case law is cited for guidance where this issue has been addressed and decided. Article 162 for the executive is not co-extensive with the jurisdiction vested in the judiciary exclusively conferred on the High Court under Articles 226 & 227 and the Supreme Court under Article 142 to do complete justice in a cause and to the Subordinate Courts in Chapter VI of the Constitution. Article 162 is not a panacea for all ills. Article 162 cannot override the parent Act and replace its mandates. The enacted law and the interpretation of Judges must inform us on how to differentiate cases of rank trespassers, third party licencees, and abusive offspring and what their families might have to deal with in old age within the discordant family unit headed by the owner senior citizen, looking for emotional and physical needs from those whom they have nurtured a semblance of rights of inheritance etc. to avoid sweeping them all under the same carpet with one stroke of the brush.

The submissions of Mr. Anupam Gupta on the ruling in *Justice Shanti Sarup Dewan's* case strongly relied upon by the respondents.

66. Mr. Gupta distinguishes the judgment of the Division Bench in this case arguing that it is a case on its own facts. The decision was rendered under the Chandigarh Rules and the shortcoming the administration had as the CAP had not been formulated by the UT Administration since 2007. The issue of eviction was not before the Court in the setting of the MWPSC Act

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and the Rules. The judgment is explained by the learned Single Bench of this Court speaking through Kannan, J. in Major Harmohinder Singh (Retd.) Vs. State of Punjab & others [CWP No.24392 of 2013 (O&M) decided on 12.08.2014], while dealing with an argument that the authorities are required to be constituted to give effect to the provision of Section 22 for protection of life and property of a senior citizen under the Act in the State of Punjab also in pursuance of the directions issued in *Justice Shanti Sarup Devan's* case, observed while distinguishing that case as follows:

> "3. It must again be remembered that direction given by the Division Bench in *Justice Shanti Sarup's case* to be an extraordinary case in an extraordinary situation. He was a former Chief Justice of this Court who was seeking for protection in the court he presided. The relief granted cannot be a precedent to a commonplace occurrence of the daily squabble at home between spouses or members in the family and a precipitate action for ejectment of a wife or a daughter-in-law from the matrimonial home, which is understood as a shared household between husband and wife or a father, son and daughter-in-law. Even a potent and protective legislation like Protection of Women against Domestic Violence Act, 2005 (for short, Act of 2005) will be rendered effete, if it were to be wrongly assumed that a father can throw out his daughter or daughter-in-law; that a husband can throw out the wife, estranged wife or divorced wife. The provisions of the Act of 2007 and the Act of 2005, referred to above, cannot be used for cross purposes, one annihilating the other. A parent who invokes the provisions of the Act of 2007 cannot create a situation that makes irrelevant the right of a female for securing a protection which is guaranteed under the Act of 2005. The provisions of the protection which is contemplated under Chapter V is an empowering provision for the welfare of a senior citizen that must be read cohesively that the right of a woman to be protected which is guaranteed under the Act of 2005. *Justice Shanti Sarup's case* (supra) must be confined

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> to the facts of the case. It was the case of a person, who had made provision for son and daughter-in-law for a separate house elsewhere. There were incidents of intense disharmony and physical and mental assaults. No two cases are alike. It will be wrong to import a principle of law from the judgment that law recognizes an action for ejectment for a husband or father in law to deny a woman a right to shelter, the most required protection for a woman, the recognition of her right to safety and a non-negotiable tool for nurturing her dignified living."

67. In appeal, the Division Bench of this Court by its judgment reported as Major Harmohinder Singh (Retd.) Vs. State of Punjab & others, 2017 (1) RCR (Civil) 904 upheld the order of the learned Single Judge while dealing with the judgment in *Shanti Sarup Dewan's* case observing in conclusion as follows:

> "5. In the facts and circumstances of the instant case, we are not in agreement with the aforesaid contention. We have gone through the Rules of 2012, framed by the Punjab Government, under sub-sections (1) and (2) of Section 32 of the Act of 2007. In our opinion, these Rules are comprehensive Rules, which deal with the object of the Act of 2007 and give sufficient mechanism to take care of the maintenance of senior citizens and protect their life and property. Not only a Tribunal has been constituted, but an Appellate Authority has been provided to hear grouses of the senior citizens with regard to their maintenance, including protection of their life and property. A complete mechanism in this regard has been provided. Under Rule 22 of the Rules of 2012, the District Magistrate has to ensure that life and property of senior citizens of the district are protected. The District Magistrate has ample power under the Cr.P.C., to protect a person, who is in possession of a property. If a person, **who is in settled possession of a property**, has been illegally dispossessed, the District Magistrate has ample power under the Cr.P.C., to protect possession of such person.

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But the District Magistrate, in our opinion, cannot be empowered to evict a person, who is in possession of a property for a long time. Such person can be dispossessed by following due process of law. If the District Magistrate is permitted to summarily evict such person, it will cause great injustice to the person, who is in settled possession. He may be in possession under some right. In the present case, the appellant has already taken recourse to the civil court. His suit for eviction against his divorced wife and sons is pending. As noticed by the learned Single Judge, a divorced wife has a right of maintenance and right of residence. The divorced wife and sons of the appellants are seriously contesting the claim of the appellant before the civil court. The learned Single Judge has rightly observed that a divorced wife cannot be turned out of the house by the husband, because she has protection under the Protection of Women against Domestic Violence Act, 2005 (hereinafter referred to as `the Act of 2005'). Therefore, the provisions of the Act of 2007 and the Act of 2005 cannot be used for cross purposes, one annihilating the other. Thus, we do not find any wrong in the observation made by the learned Single Judge that the decision of this court in *Justice Shanti Sarup Dewan's case* (supra) is a decision given in the peculiar circumstances, which do not exist in the present case. In our opinion, in the facts and circumstances of the instant case, the direction sought by the appellant has rightly been declined by the learned Single Judge. The appellant, at present, is pursuing his cause before the civil court. The proceedings of the civil suit pending between the parties should be expedited. We grant liberty to the appellant to move an appropriate application before the civil court praying for expedite disposal of his suit. If any such application is filed, we hope that the civil court will take care of the same and shall decide the said suit expeditiously, so that justice is done to both the parties."

68. The civil law principle of long settled and continuous possession was introduced into the MWPSC Act by the appellate bench as a

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ground of protection of the respondent therein against the arbitrary power of summary eviction. The judgment was pronounced on 14.10.2014 just before the Punjab Action Plan was enforced. The Action Plan does not subtract from its principle when the Plan is misconceived and in excess of jurisdiction in clauses 1 to 3.

69. There is another case in point from the Kerala High Court, which deserves notice as it was rendered under the MWPSC Act in an application for maintenance and eviction, which was omnibus document Ex.P2 and one of the prayers was to evict the 4th respondent and his family members from the residence where the petitioner was residing. The Court took the view in 2012 that the Act did not empower the Tribunal to evict. Thus, it was observed in C.K.Vasu Vs. Circle Inspector of Police, decided on 25.05.2012 [2012 SCC Online Ker. 10658] and reported much later as 2017 (5) RCR (Civil) 1011 as follows:

> "7. … The Tribunal is also empowered to pass an order of maintenance against the children or the relative as the case may be. It has also got the power to recover the amount awarded as maintenance. The Tribunal constituted under the Act can only pass an order for maintenance of a senior citizen or the parent unable to maintain himself if the Tribunal is satisfied that there was neglect or refusal on the part of the children or relatives to maintain him. The Act does not empower the Tribunal constituted under the Act to grant the reliefs prayed for in Ext.P2, one of which is to evict the fourth respondent and his family members from the residence where the petitioner which he is residing. The only other relief sought in Ext.P2 is to prevent his children from trespassing into his house and from causing bodily injury. That is also a matter on which the Tribunal cannot grant any relief. It is evident from the pleadings and the materials on record, especially the statement made by the petitioner's wife before

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> the Police that the petitioner is not a person who is incapable of maintaining himself from his own earning or out of the property owned by him. The petitioner admittedly owns 15 acres of land. He has no case that he is not earning any income from his lands. Therefore even if Ext.P2 is treated as an application for maintenance, on the admitted facts the petitioner is not entitled to any relief. The petitioner has alleged in paragraph 5 of Ext.P2 that his children forcibly took away the sum of Rs.1,50,000/- from the almirah on 29.4.2011. However in Ext.P4 complaint filed before the Police on 14.6.2001, he had no case that his children forcibly took away the sum of Rs.1,50,000/-. I am therefore of the considered opinion that the reliefs prayed for by the petitioner cannot be granted."

70. In *Shanti Sarup Dewan's* case, there were two issues framed for answer by the Division Bench and the response and directions are in para.39 are reproduced hereafter:

> "(i) Whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act?
>
> (ii) Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so called failure of Union Territory Administration in complying with its obligations under the said Act?"
>
> xx xx xx
>
> "39. A lot of hue and cry has been raised on the issue as to whether directions can be issued in writ proceedings under Articles 226/227 of the Constitution of India to enforce the provisions of the said Act. We have already noticed above that a proper mechanism for enforcement of the provisions of the said Act for protecting the property rights of the appellants under Section 22 of the said Act has not been put in place by the Union Territory Administration and enforcement would be a big issue. How and through which machinery can a Special Cell ensure the eviction of respondent No. 7 from the property so that the appellants can

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live in peace in their house? Can we say that the Courts would be powerless both in equity and law to enforce such an order when primacy has been given to the provisions of the said Act over all other law. The answer to these questions should be in the negative. If the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under Article 226 of the Constitution of India. (A.B.L. International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd. 2004(3) S.C.C. 553 and Mrs. Sanjana M.Wig Vs. Hindustan Petro Corporation Ltd. AIR 2005 SC 3454).

We thus issue the following directions:-

(i) The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under Section 32(1) of the said Act for the purposes mentioned under sub section (2) of Section 32 more specifically clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under Section 22 of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of Section 22 of the said Act. Such action may be taken within one month from today.

(ii) There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in

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> the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22 (2) of the would not suffice. Infact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent."

<u>The reply of the State of Punjab</u>

71. Preface: The Punjab State has filed its written statement dated 19.4.2018 through the officer who passed the impugned order. This action does not do any credit for the State. The court normally does not expect that officers of the Government who are or may be interested in a cause, and in the ultimate result of the petition and have passed the impugned order, to file written statements on behalf of the State defending their own order without due consultation with the authorities higher while putting forth a dispassionate defense of the case through proper channels. The officer respondent No.3 i.e. the District Magistrate-cum-Deputy Commissioner, Patiala should have had the better sense to recuse himself from filing the reply and ought to have left it to the State Government to submit a dispassionate, disinterested and independent reply in defence of the Action Plan, for the officer not to be seen as a judge in his own cause having passed the impugned order dated 14.11.2017/1.1.2018.

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72. I have, therefore, not placed much reliance on that written statement. Nevertheless, the saving grace is that after I passed the order dated 5.7.2018 crystallizing the issues for consideration and speaking out my mind ad interim, the State has filed a detailed additional affidavit through Sh. Charanjit Singh Mann, Joint Director, Department of Social Security and Women & Child Development, Punjab on behalf of the State of Punjab taking the pleas reiterated by the learned Advocate General, Punjab during the hearing in defense of the Action Plan as legally valid. I have read both the pleadings. The State stoutly supports its Action Plan as it was legally enjoined to formulate it under section 32 (f) of the MWPSC. Without eviction power the protection of life and property of a senior citizen would be rendered meaningless. I have also been through the written statement of the third respondent, which says nothing new.

The submissions of Mr. Puneet Bali and Mr. S.S.Momi, assisting the learned senior counsel representing the 3rd respondent – Dr. Surinder Kaur.

73. Mr. Puneet Bali for Surinder Kaur has cried hoarse that she is an octogenarian and deserves to be left in peace and harmony while supporting the eviction order as legal and valid and within the power conferred on the District Magistrate. She is the rightful owner of the property as the revenue papers record her name as the title holder of Nasirpur Farm. An interpretation deserves to be placed on Action Plan which is liberal as the Act is the beneficial piece of legislation designed for the senior citizen alone and their rights are predominant and will override all other rights that may be asserted by the petitioner. The petitioner has not lost her right to adjudication in the civil court in the pending suit at Patiala. The Action Plan gives speedy relief to a belaboured senior citizen which cannot

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be achieved by a protracted trial for declaration of rights. It is a temporary measure to restore peace of mind of the third respondent, who is in the evening of her life and cannot be harassed by the petitioner. Even if it is not a case for a claim to maintenance, even then, the remedy is provided under the Action Plan by the State in furtherance of the Act. Eviction is inherent in the right to life and property of a senior citizen and without it, the Act will be an empty formality. The Action Plan has been notified under Section 32(2)(f) and it operates as a statutory rule enforceable before the Maintenance Tribunal. He relies on judgments, the first and foremost of which are Division Bench judgment in *Justice Shanti Sarup Dewan's* case. The other judgments relied upon, other than the Division Bench in Smt. Raksha Devi Vs. Deputy Commissioner -cum- District Magistrate, Hoshiarpur & others, CWP No.5086 of 2016 (O&M) decided on 03.05.2018, which I will deal with shortly, are in Gurpreet Singh Vs. State of Punjab & others, 2016 (1) RCR (Civil) 324 (DB) to contend that the District Magistrate is competent authority to take steps for the protection of life and property of the senior citizens; jurisdiction of the civil court is barred in respect of all matters falling within the jurisdiction of the Act in terms of Section 27; and, summary exercise of the jurisdiction by District Magistrate is without prejudice to the rights of the parties which may be determined by the civil court in accordance with law, [paras 12 & 13]. In this ruling, the Punjab Action Plan was noticed and so was the contention of the petitioner that the Plan for eviction suffered from excessive power of delegated legislation conferred on the State and, therefore, the petitioner could not be ordered to be ejected by the District Magistrate. With utmost respect, the petition was dismissed in limine without notice to the

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respondent/s and, therefore, the issue was not debated in the light of the submissions made by Mr. Anupam Gupta in this case. Neither did the Bench have the benefit of the clear and categorical stand of the Union of India that eviction was not contemplated under the Act, as is the additional affidavit filed in this case on behalf of the Central Government, specifically called for by this Court by impleading the Union of India as the party. The Court had assumed power in the District Magistrate, which is evidenced in para.10 of the judgment, which reads as under:

> "10. We have heard learned counsel for the petitioner and examined the contention as to whether the District Magistrate is competent to order eviction of an unauthorized occupant in terms of the provisions of the Act."

74. The argument in *Gurpreet Singh* case (supra) [decided in limine] had been that the Action Plan is not in accordance with the provisions of the Act, when Section 22 (2) is read with the definition of the term 'prescribed' in Rule 2 (e). The Punjab Government has not introduced the Action Plan in the Rules, 2014, which was required to be 'prescribed' in the Rules. The Hon'ble Division Bench did not have the opportunity to form an opinion on this aspect from all sides. The case is, therefore, distinguishable in law as canvassed before this court at the several hearings in this case with the specific issue crystallized for determination.

75. In *Smt. Raksha Devi case*, the Division Bench in a reference to a larger Bench, whether the decision in Jagmeet Kaur Pannu Vs. Ranjit Kaur Pannu, 2016(2) RCR (Civil) 82, was in conflict with the objective of the Act and contrary to the spirit of the non obstante clause in Section 3 of the Maintenance Act and the judgment of this Court in Promil Tomar Vs. State of Haryana & others 2014 (1) RCR (Civil) 403 and Sumesh Anand Vs.

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Vinod Anand & others, 2016 (1) RCR (Civil) 278, with the learned Single Judge questioning the correctness of the judgment in *Jagmeet Kaur Pannu* case (a Punjab matter), as the question of law involved in the said case was left open by the Supreme Court and was required to be decided authoritatively. The learned Single Bench formulated six questions arising for determination by the Larger Bench, which are reproduced below:

> "(i) Whether the judgment in Jagmeet Kaur Pannu Vs. Ranjit Kaur Pannu which lays down that a gift deed executed by a senior citizen in favour of his/ her son/ daughter would be irrevocable as per provisions of Section 126 of the Transfer of Property Act whereas Section 3 of the Maintenance Act specifically contains a non-obstante clause and provides that the provisions of the Maintenance Act will have an overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act is a good law?
>
> (ii) Whether a senior citizen will be debarred from seeking relief under Section 23 of the Maintenance Act in case a senior citizen has transferred his/ her property to any of his / her relatives/ children out of love and affection in case the transfer deed does not specifically provide a condition that transferee shall provide basic amenities and basic physical needs to the transferor and whether any specific promise is required in the transfer deed for providing of basic amenities and basic physical needs in future till the life of the senior citizen and when a transfer is made by a senior citizen in favour of his/ her relative/ children on account of love and affection and services rendered, whether the promise of providing basic amenities and physical needs to the transferor would not be an implied condition in view of the objective and scheme of the Act?
>
> (iii) Whether in the judgment in Jagmeet Kaur Pannu Vs. Ranjit Kaur Pannu's case, the principle of interpretation of statutes of 'Generalisbus specialia derogant' i.e. prior general

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> Act may be effected by the subsequent particular/ special Act, has been ignored while relying upon the provisions of the Transport of Property Act in context to the wording of the transfer deed in favour of close relations?
>
> (iv) Whether the principles of harmonious construction of two separate statutes i.e. Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and the provisions of Transfer of Property Act, 1882, can be applied when both the Acts deal in different subjects and are not pari materia?
>
> (v) Whether the expression used in one Act could be used in another Act especially when there is a non obstante provision in Section 3 of the Maintenance Act? And
>
> (vi) Whether alienation of property by way of gift or otherwise by any citizen would be deemed to be the result of fraud, coercion or undue influence, if transferee does not provide basic amenities to the transferor."

76. The Hon'ble Division Bench crystallized and reframed the question to be answered limiting the consideration to the following issue:

> "Whether Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is applicable only where the conditions stipulated therein viz. that the transferee shall provide the basic amenities and basic physical needs to the transferor is in writing or a part of the document of transfer?"

This question does not arise in the present case as a claim for maintenance or neglect is not pleaded. The Punjab Action Plan was not before the Bench for its consideration. The judgment is confined to its facts and the ambit of Section 23 etc. and the issue crystallized or any of those suggested by the learned Single Judge to examine the correctness of the two judgments in *Promil Tomar* and *Sumesh Anand* cases. The case is distinguishable and is of no help to test the *vires* of the Action Plans

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77. Mr. Bali next referred to the judgment in J.K.Industries Limited & another Vs. Union of India & others, (2007) 13 SCC 673, on the doctrine of ultra vires wherein the Supreme Court observed as follows:

> "(ii) Doctrine of ultra vires
>
> 127. At the outset, we may state that on account of globalization and socio-economic problems (including income disparities in our economy) the power of Delegation has become a constituent element of legislative power as a whole. However, as held in the case of Indian Express Newspaper v. Union of India reported in (1985) 1 SCC 641 at page 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, **it may also be questioned on the ground that it does not conform to the statute under which it is made**. **It may further be questioned on the ground that it is inconsistent with the provisions of the Act** or that it is contrary to some other statute applicable on the same subject matter. **Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be in conformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution.**
>
> 128. Subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned. A distinction must, however, be made between delegation of a legislative function in which case the question of reasonableness cannot be gone into and the investment by the statute to exercise a

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particular discretionary power. In the latter case, the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration etc. **A subordinate legislation may be struck down as *arbitrary or contrary to statute* if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution**. This can be done on the ground that the subordinate legislation does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19 of the Constitution. However, it may be noted that, a notification issued under a section of the statute which requires it to be laid before Parliament does not make any substantial difference as regards the jurisdiction of the Court to pronounce on its validity.

129. Apart from the grounds referred to by this Court in the above judgment in the case of Indian Express Newspaper, it is important to bear in mind that where the validity of subordinate legislation is challenged, the question to be asked is whether the power given to the rule making authority (in the present case the Central Government under section 642(1) of the Companies Act) is exercised for the purpose for which it is given. Before reaching the conclusion that the Rule is intra vires (we have to begin with the presumption that the Rule is intra vires), the court has to examine the nature, object and the scheme of the legislation as a whole and in that context, the court has to consider what is the Area over which powers are given by the section under which the Rule Making Authority is to act. However, the court has to start with the presumption that the impugned Rule is intra vires. This approach means that, the Rule has to be read down only to save it from being declared ultra vires if the court finds in a given case that the above presumption stands rebutted.

130. If the impugned rule is a delegated legislation it would follow that the said rule is made in exercise of the power

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> conferred by the statute. Legislature has wide powers of delegation. This, however, is subject to one limitation, namely, **it cannot delegate uncontrolled power**. Delegation is valid only when it is confined to legislative policy and guidelines."

As I read this judgment and to synthesize the rules of construction in *J.K.industries* case, I find no limitations on the Court while testing subordinate executive action [as in the Action Plan] under delegated power by Parliament to the State to make rules and to test executive action on the doctrine: if "it does not conform to the statute" or if "it is inconsistent with the provisions of the Act" or if "it is manifestly arbitrary and unjust" or if it "violates Article 14 of the Constitution" or is "arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute". But the State [in the Action Plan] "cannot delegate uncontrolled power". The judgment does not help Mr. Bali in any meaningful way and instead brighten the path to check the *vires* of the Punjab Action Plan and the many infirmities it suffers from.

Submissions of the learned Advocate General, Punjab

78. Central and State laws abound in conferring powers on officers holding various posts under the executive to be often vested with the Magisterial-powers to meet a particular urgent situation; for instance, Executive Magistrates acting under section 145 of the Cr.P.C. to maintain promptly to maintain peace and law and order regarding threat to possession. Mr. Nanda relies on this and analogous provisions of law arguing that no exception can be taken to exercise of such powers especially for beneficial uses in legislation. The Action Plan confers such powers to save the life and

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property of a senior citizen which cannot be left to the delays in civil courts. Rather, the Act bars suits. He submits that the avowed policy behind the Act is to comprehensively protect the life and property of senior citizens and without the power to evict persons in unauthorized occupation of properties of senior citizens, their life and property cannot be effectively protected and the very purpose of the Act will be defeated if the determination of rights or perceived rights becomes a stumbling block. Conferment of quasi judicial or even judicial powers on executive magistrates does not violate Article 50 of the Constitution or the independence of the judiciary; it is settled that administrative officers can exercise quasi-judicial function; even conferment of judicial powers on executive magistrates has been upheld. Alternatively, it is submitted that assuming (without conceding) that the Act does not provide eviction of persons from properties owned and possessed by senior citizens, the Action Plan is in accordance with the power of the State under Article 162 of the Constitution read with Entry I (*Public Order*) and 18 (*Competence of State to legislate on "Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant"*) of List II of Sch. VII to the Constitution and, therefore he Action Plan is within the executive domain and immune from challenge. Provision has been made by the State Government therein which owes to itself an independent existence, even without the aid of the Act and the rules made by the State itself. Eviction is inherent in protection of property even by the common law. He urges that various laws confer such extensive powers. There is nothing novel in the Act, the rules and the Action Plan read as a symbiotic whole in their fields of operation by empowering eviction even by laws akin on the statute book where the role of the District Magistrate on his administrative side is

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altogether different from his role as a quasi judicial authority. His role is of a temporary nature under the Action Plan for the evicted party to establish his rights in property, if any, in a civil court and secure a decree. But the urgent need of the senior citizen for peace and the protection of life and property cannot be postponed to a long drawn out litigation in a regular court. The District Magistrate acts as a saviour of the senior citizen in distress and who may never see the end of litigation outside the special Tribunal in case he or she is drawn in.

79. Mr. Atul Nanda submits from his written brief presented to the Court that the doctrine of the basic structure of the Constitution has no relevance to examining the validity of the Punjab Action Plan (PAP). The doctrine is inapplicable while determining the validity of ordinary laws and is applicable only to test the constitutionality of the exercise of constituent power. He cites Indira Nehru Gandhi Vs. Raj Narain, 1975 Supp. SCC 1. The Supreme Court observed that legislative measures are subject to restrictions of the theory of basic structures or basic features to equate legislative measures with Constitutional Amendment. The ordinary law 'can be declared invalid for the reason that it goes against the vague concepts of democracy; justice; political, economic and social; liberty of though, belief and expression; or equality of status and opportunity, or some invisible radiation from them'. Per Chandrachud J. (para.691), 'ordinary laws have to answer two tests for their validity; (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution, and (2) It must not offend against the provisions of Article 13(1) and (2) of the Constitution'. The principle has been reiterated

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in State of Karnataka Vs. Union of India, (1977) 4 SCC 608 [7 Judges Bench] and Kuldip Nayar Vs. Union of India (2006) 7 SCC 1 [C.B.].

80. I may add here as per the submissions of Mr. Anupam Gupta that there has been a departure in *K.T.Plantation* case regarding property rights, which can be tested, in addition, on principles of rule of law as another facet of challenge.

81. Mr. Nanda would then submit that without the power to evict persons in unauthorized occupation of properties of senior citizens, the life and property of senior citizens cannot be effectively protected and the purpose of the Senior Citizens Act will be defeated. The policy is aimed to strengthen their legitimate place in society and help older persons to live the last phase of their life with purpose, dignity and peace. He refers to National Policy on Older Persons – 1999 in the Ministry of Social Justice and Empowerment, Government of India, New Delhi (Annex R-1). He quotes from para.65 of the policy:

> "65. Old persons have become soft targets for criminal elements. They also become victims of fraudulent dealings and of physical and emotional abuse within the household by family members to force them to part with their ownership rights. Widow's rights of inheritance, occupancy and disposal are at times violated by their own children and relatives. It is important that protection is available to older persons. The introduction of special provisions in IPC to protect older persons from domestic violence will be considered and machinery provided to attend all such cases promptly. Tenancy legislation will be reviewed so that the rights of occupancy of older persons are restored speedily."

82. It was, thereafter, the Senior Citizens Act was enacted, inter alia, providing for matters set out in the Statement of Objections and Reasons to the Act; (a) to provide setting up of an appropriate mechanism to

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provide need-based maintenance to parents and senior citizens; and (b) institutionalization of a suitable mechanism for protection of life and property of older persons.

83. He submits that the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 was referred to the Standing Committee on Social Justice and Empowerment, which submitted its 26th Report presented to the Lok Sabha and the Rajya Sabha on 06.09.2007. In the context of Clauses 22(1) and 22(2) of the Bill, corresponding with Sections 22(1) and 22(2) of the Senior Citizens Act, the said Report states as under:

> "1.54 Keeping in view the fact that vulnerable senior citizens have become soft targets for criminal elements especially in cities, the Committee enquired how the Central Government would be able to play a more substantial and active role to protect the life and property of the senior citizens. The Ministry in their written reply have stated that Protection of life and property basically pertains to Law and Order, which is a State subject. Therefore, it has been provided under Section 22(2) that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizen. Further, Section 31 provides that the State Governments may make rules for carrying out the purposes of the Act. Therefore, this issue can be comprehensively addressed by the State Governments at the time of framing rules, if any, directions/guidance in this matter is considered necessary in the course of implementation of the legislation, an enabling provision has already been included vide Section 30 of the Bill, which empowers the Central Government to give such directions to State Governments for carrying out the execution of the provisions of this Bill."

84. The Advocate General then refers to Part IV of the Constitution, which contain 'directive principles of State Policy' referring to

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Article 41 which leaves it to the State to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. He links this to be read with Entry 23 of List III and Entry 18 of List II. Therefore, the Action Plan is within the competence of the State Government. He next submits on the settled rule of interpretation that social welfare legislations should be given a wide and liberal interpretation for advancing the objects and purpose of the statute. He refers to Hindustan Lever Ltd. Vs. Ashok Vishnu Kate, (1995) 6 SCC 326, which gives effect to the legislative purpose and shuns the literal construction. There is evidence of a trend away from the purely literal towards the purposive construction of statutory provisions. There can be no quarrel with the proposition of law but I fail to see how it promotes the case of the State.

85. It is also his contention that a conferment of quasi judicial or even judicial power on Executive Magistrate/s does not violate Article 50 of the Constitution on the independence of the judiciary. Further contends that it is settled law that administrative officers can exercise quasi judicial functions. Relies on Jayantilal Amratlal Shodhan Vs. F.N.Rana, 1964 (5) SCR 294. Even conferment of judicial powers on Executive Magistrate/s has been upheld. He referred to Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569 [paras.305, 306, 309, 310, 313, 316 & 317] that conferring of powers to record confessions under the criminal procedure code is a judicial function and executive magistrates is permissible as there is no violation of Articles 14 and 21 of the Constitution and is constitutionally valid. To avoid reproduction of the all the passages in *extenso*, the following extracts are

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relevant for the purposes of the argument and there is also a caveat issued by the Supreme Court. The same are reproduced below:-

> "316. In view of the discussions made above and also in the light of the principles laid down in the various decisions cited above, we hold that the Executive Magistrates while exercising their judicial or quasi-judicial functions though in a limited way within the frame of the Code of Criminal Procedure, which judicial functions are normally performed by Judicial Magistrates can be held to be holding the judicial office. Therefore, the contention of the learned counsel that the conferment of judicial functions on the Executive Magistrates and Special Executive Magistrates is opposed to the fundamental principle of governance contained in Article 50 of the Constitution cannot be countenanced. Resultantly, we hold that sub-section (3) of Section 20 of the TADA Act does not offend either Article 14 or Article 21 and hence this sub-section does not suffer from any constitutional invalidity.
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> 317. Though we are holding that this section is constitutionally valid, we, in order to remove the apprehension expressed by the learned counsel that the Executive Magistrates and the Special Executive Magistrates who are under the control of the State may not be having judicial integrity and independence as possessed by the Judicial Magistrates and the recording of confessions and statements by those Executive Magistrates may not be free from any possible oblique motive, are of the opinion that it would be always desirable and appreciable that a confession or statement of a person is recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates unless there is compelling and justifiable reason to get the confession or statement, recorded by the Executive or Special Executive Magistrates."

86. Also from the same judgment the Supreme Court recalled the opinion of a Constitution Bench in Ram Jawaya Kapur Vs. State of Punjab,

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AIR 1955 SC 549. In that case, Mukherjea, C.J. while dealing with the scope of separation of powers has observed thus:

> "The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated it by the legislature.
>
> It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws…"

87. It follows, that the executive can exercise judicial powers but in a limited way. There is no carte blanche of sweeping powers on the executive to enter into the purely judicial domain. Power to record confessions cannot be equated with the power to evict under MWPSC Act.

88. He next submits that the grounds on which delegated legislation may be challenged are summarized in State of Tamil Nadu Vs. P. Krishnamurthy, (2006) 4 SCC 517. He referred to Para. 15, which reads as follows:

> "15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well

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recognized that a sub-ordinate legislation can be challenged under any of the following grounds:-

(a) Lack of legislative competence to make the sub-ordinate legislation.

(b) Violation of Fundamental Rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules)."

89. Importantly, Section 22(1) further specifies that the District Magistrates may be conferred with such powers as may be necessary for protection of life and property of senior citizens. The Punjab Action Plan confers powers of eviction upon the authority specified under the Senior Citizens Act. It is, therefore, submitted that the powers conferred under the Punjab Action Plan are in consonance with the express provisions of the Act and advance their object and purpose. The orders of the District Magistrates would be subject to judicial review under Article 226 of the Constitution and can be scrutinized and the District Magistrates held accountable. There is, thus, no violation of the doctrine of separation of powers. He quotes Paras.78 & 87 in Bhim Singh Vs. Union of India, (2010) 5 SCC 538:

"78. While understanding this concept, two aspects must be borne in mind. One, that Separation of Powers is an essential feature of the Constitution. Two, that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the

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> same conclusion when we assess the position within the Constitutional text. The Constitution does not prohibit overlap of functions, but in fact provides for some overlap as a Parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wrestling away of the regime of constitutional accountability.
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> 87. Thus, the test for the violation of separation of powers must be precisely this. A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability. It is through this test that we must analyze the present Scheme."

90. Alternatively, Mr. Nanda submits that even if the Act does not provide specific relief for eviction, the Action Plan is in accordance with the powers of State under Article 162 read with Entry I, List II of Schedule VII to the Constitution, which provision contains amplitude of power to make policy provided it is within the legislative competence of the State and does not violate any statutory provision. In any case, the State has legislative competence over "public order" under Entry I, List II, Schedule VII of the Constitution. Hence, the State is entitled to enact a policy for maintenance of "public order". It is submitted that a situation such as the present, namely, disputes between senior citizens of the States and the person in unauthorized possession of their properties, would disrupt the public order of the State and hence the State is entitled to provide for measures to maintain public order in the State.

91. Countering on this point, Mr. Anupam Gupta refers to Para 73 in *Kartar Singh's* case, which judgment is relied upon by the Mr. Atul Nanda, Advocate General, Punjab who himself relies on *Kartar Singh* case

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to submit that "public order" does not fall under Entry 1 of List II (State List). Para.73 dealing with the Terrorists and Disruptive Activities (Prevention) Act, 1987 (No. 28 of 1987) commonly known as TADA Act reads as follows:

> "73. In our view, the impugned legislation does not fall under Entry 1 of List II, namely, 'Public order'. No other Entry of List II has been invoked. The impugned Act, therefore, falls within the legislative competence of Parliament in view of Article 248 read with Entry 97 of List I and it is not necessary to consider whether it falls under any of the entries in List I or List III. We are, however, of the opinion that the impugned Act could fall within the ambit of Entry 1 of List I, namely, 'Defence of India'."

92. Article 248 provides for the residuary power of legislation and lays down the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

93. Regarding summary procedure for eviction by administrative offices in Indian Law, Mr. Nanda refers to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. [See, Section 5] He refers to Kaiser-I-Hind (P) Ltd. Vs. National Textile Corporation (Maharashtra North) Ltd., (2002) 8 SCC 182. The reference is also made to Maganlal Chaganlal (P) Ltd. Vs. Municipal Corporation of Greater Mumbai, (1974) 2 SCC 402, wherein the Commissioner of the Municipal Corporation was conferred powers under the Bombay Government Premises (Eviction) Act, 1955, to evict persons in unauthorized occupation from premises belonging to the Municipal Corporation, which Mr. Nanda says are similar to those under the Public Premises Act and Punjab Action Plan. The Bombay Act was tested on the ground that the summary procedure for eviction was discriminatory and provided for a very drastic and harsh

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procedure. A seven Judge Bench of the Supreme Court in *Maganlal Chaganlal* case has upheld the validity of the said statute and observed as follows:

> "14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Ali Sarkar's case and Suraj Mall Mehta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in Suraj Mall Mehta's ease, a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in Saurashtra case and Jyoti Pershad's case the statute will not be hit by Article 14. Then again where tile statute itself covers only a class of cases as in Haldar's cave and Bajoria's case the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. **Therefore, the contention that the mere availability of two procedures will vitiate one of them; that is the special procedure, is not supported by reason or authority.**
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> 17. It is also necessary to point out that the procedures laid down by the two Acts now under consideration are not so harsh or onerous as to suggest that a discrimination would result if resort is made to the provisions of these two Acts in some cases and to the ordinary Civil Court in other cases. Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the: party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and Produce documents and be represented by lawyers. The

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> provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard-for the person affected. So is the provision for appeal to the Principal Judge of the City Civil Court in the city of Bombay, or to' a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mehta's case. The main difference between the procedure before an ordinary Civil Court and the executive authorities under these two Acts is that in one case it will be decided by a judicial officer trained in law and it might also be that more than one appeal- is available. As against that there is only one appeal available in the other but it is also open to the aggrieved party to resort to the High Court under the provisions of Article 226 and Article 227 of the Constitution. This is no less effective than the provision for a second appeal. On the whole, considering the object with which these special procedures were enacted by the legislature we would not be prepared to hold that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Article 14 does not demand a fanatical approach. We, therefore, hold that neither the provisions of Chapter V-A of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Article 14 of the Constitution."

94. Next, he cites Andhra Pradesh Land Encroachment Act, 1905, which provides powers of summary eviction to exclude determination of complicated questions of title with reference to case law in Government of Andhra Pradesh Vs. Thummala Krishna Rao, (1982) 2 SCC 134. He next refers to the provisions of the Rajasthan Land Revenue Act, 1956 with reference to case law in State of Rajasthan Vs. Padmavati Devi, 1995 Supp. (2) SCC 290 on summary eviction under the Revenue Act. Section 91 of the

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Act provided a summary remedy. A close reading of the judgment reveals the following observations:

> "6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Anr. 1982 (3) SCR 5000, has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bonafide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. <u>For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bonafide claim regarding his right to be in possession</u>. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."

95. He gives other illustrations for Executive Magistrate/s being conferred with quasi-judicial and judicial powers, such as, Inquest report under Section 174 of the Cr.P.C.; proceedings under Sections 143 & 144 of the Cr.P.C.; powers of removal of unauthorized occupation from a highway have been conferred on the Highway Administration or officer authorized by such administration under Section 26 of the Control of National Highways (Land and Traffic) Act, 2002. Apart from the judgments, which have already

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been noticed, Mr. Nanda also cites decision of this Court in Gurpreet Singh Vs. State of Punjab & others, 2016 (1) RCR (Civil) 324; of the Gujarat High Court in Jayantram Vallbhdas Meswania Vs. Vallabhdas Govindram Meswania, AIR 2013 Guj. 160; of the Delhi High Court in Nasir Vs. Government of NCT of Delhi & others, (2015) 153 DRJ 259 and Sunny Paul & another Vs. State of NCT of Delhi & others, [W.P.(C) No.10463/2015 decided on 15.03.2017).

Submissions of the learned Advocate General, Haryana.

96. Mr. Baldev Raj Mahajan, learned Senior Advocate and the learned Advocate General, Haryana, representing the State of Haryana has supported the Haryana Action Plan as legal and valid. It is his contention that preference has to be given to the senior citizens under the MWPSC Act. The Act provides a short-cut remedy by barring the jurisdiction of the civil court. He also submits that neither the Act nor the rules nor the Haryana Action Plan takes away the jurisdiction of the writ court in considering a case for interim stay or by moulding the relief at the final stage in writ proceedings. This is adequate protection of the respondent. Neither has the discretion nor the jurisdiction been affected. He also submits that the life and property used in section 22 would include right to evict the trouble-shooter family member. He has, however, not dwelled on any other aspect, which grounds have been covered by the submissions of the learned senior counsel and other counsel for the respondents, apart from the stand of the Union of India in its affidavit and not touching thereon. He has, however, made a submission that powers under the Act have been conferred on the Sub Divisional Magistrates because of the large number of Sub Divisions in Haryana (the same as Punjab), whereas the District Magistrate is a single

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officer, who has delegated authority to sub delegate powers to an officer below him in rank which includes the Sub Divisional Magistrate to exercise such powers so that the outreach of the Act goes to the sub divisional level of each District for easy access to senior citizens living in the Tehsils and sub-divisions of a district. This makes good sense in the explanation of Section 22(1) of the Act to reach out to the spot as far as possible to enable the senior citizen to approach for relief at the door step.

Submissions of the learned Additional Solicitor General of India.

97. Mr. Satya Pal Jain, Senior Advocate and Additional Solicitor General of India has stoutly supported the affidavit filed on behalf of the Central Government and would submit that judicial powers ought not be left, in principle, in the hands of District Magistrate/s as it has the potential of creating havoc not only under the present Act, but also in other enactments, such as, Representation of the People Act, 1951 where wide powers are bestowed on the executive officers. He criticizes entrustment of election petitions to Election Tribunals on District Magistrates and the system deserves to be revamped to confer powers on civil judges to inspire public confidence in the rule of law. The issues involving valuable rights of the peasantry in agricultural lands are handled by the Revenue Courts which have a tardy mechanism in built with a seven-tier litigation starting from the court of Assistant Collector Ist Grade, to Commissioners, Financial Commissioner and the High Court until the Supreme Court, when such powers could properly have been vested in Judicial officers and Magistrates to inspire faith, trust and public confidence in the settled legal positions in a rule of law regime. He submits that Executive Officers can be amenable to personal, political and social pressure and can often be at a call away on the

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mobile and the landline telephone. Such pressures are far-fetched in the justice delivery system established by the courts of law to give effect to the rights of the citizens in a fair, independent and impartial manner. In the main he submits that the MWPSC Act did not entrust authority to the States or its executive officers to evict any person through the Maintenance Tribunal.

The decision of the Delhi High Court in Aarshya Gulati (through: next friend Mrs. Divya Gulati) & others Vs. Government of NCT of Delhi & others, WP (C) No.347 of 2018 decided on 30.05.2019

98. This is a decision which has not been cited by any of the learned senior counsel, but deserves to be dealt with as in first blush appears to support the stand of the respondents. The Government of Delhi in exercise of its powers under section 32(2)(f) has framed the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. These Rules have undergone amendments on 19.12.2016 and 24.07.2017. By the 2016 amendment, procedure for eviction from property was introduced and laid down in the Rules. The Delhi Government has not prescribed eviction outside the Act and the Rules. There is no Action Plan in Delhi or in Chandigarh which stands outside the Act and the Rules. The specific issue advanced before this Court was not before the Delhi High Court as to the validity and the authority to create substantive rights, disabilities and obligations in the form of summary procedure of eviction on the grounds of ill-treatment and non-maintenance. This issue is not res integra within the jurisdiction of this Court. The issue was not even before the Division Bench of this Court, when it decided *Major Harmohinder Singh's* case in which judgment was pronounced on 14.10.2014 with only the MWPSC Act and the Punjab Rules. The Punjab Action Plan came into existence on 27.11.2014 physically published in the Punjab Government Gazette, Part I, on

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13.03.2015 with retrospective effect from the date of notification. This adds greater value to the decision of our Court in *Major Harmohinder Singh's* case decided, I would say, on first principles of law. Accordingly, the decision of the Delhi High Court in *Aarshya Gulati* is clearly distinguishable.

99. There is another feature which will have to be kept in mind that even in the Delhi laws on the subject, the concept of maintenance and eviction is inter-linked and it is on failure of son, daughter or family member/s who neglects to maintain the senior citizen can opt for either or both the remedies. The Maintenance Tribunal is not designed to act as an eviction agency or should be seen akin to a re-possession agent for default in payment of installments. Eviction is neither trade nor commerce.

Reasoning/Conclusions apart from the internal reasoning in the preceding paragraphs, wherever expressed.

100. This may be all very well, as far as the contentions of the learned Advocate General, Punjab is concerned, but we have still to contend with and read the word "prescribe" and "prescribed" in section 22 (1) & (2) with the definition of "prescribed" in section 2 (e) and there goes the Punjab Comprehensive Action Plan to the winds unless saved by some other legal principle. Parliament has conferred the authority on each of the States in the Union to act in their wisdom suited to their regional genius but also to limit their power to act to give effect to the policy in the Act through statutory rules framed there under to carry out the objects and purposes of the MWPSC Act as provided for one of the enumerations relevant to this case under section 32 (2) (f), otherwise the purpose cannot be achieved merely through executive instructions under Article 162 of the Constitution but directly within the boundary of the delegated authority, an idea which the

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Advocate General supports on Article 162 and propounds a plenary executive power to the State co-extensive with its legislative power to make laws in the State or the Concurrent List in the Seventh Schedule, but which contention fails to impress me; Firstly, because the State has notified the Action Plan – as the preface itself avowedly maintains, that the Notification has been issued in the following introductory header:

"In exercise of the powers conferred under Section 22 (1) & (2) of "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007:, (56 of 2007) and as prescribed by rule 23 of "The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012", the Punjab Government is pleased to make the following Action Plan."

And, Secondly; quite obviously due to the neglect and failure in the Punjab Government to exercise the statutory option available to it under the Act which was to have introduced the provision for 'eviction' by amending its rules of 2012 and inserting CAP therein like some States have, such as Delhi and the UT Chandigarh.

101. However, one aspect requires due consideration which is rule 23 of the Punjab Rules, 2012. Rule 23 is reproduced:

> "23. Action Plan for the protection of life and property of senior citizens.—An action plan, for the protection of life and property of senior citizens shall be notified by the State Government within a period of six months from the date of publication of these rules in the official gazette and it may be revised from time to time."

Rule 23 suggests that eviction was not contemplated in 2012. The making of Action Plan was postponed by six months. The task was not completed in four months. The Header of the Action Plan reproduced in para. 95 above makes it drawn from section 22 and section 32 (2) (f) of the Act. It has not been issued in the name of the Governor unlike the Punjab Rules, 2012. The introductory paragraph of the rules, contain the following statutory format:-

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"Government of Punjab
Department of Social Security
(Disabilities Branch)

No. G.S.R. 58/C.A. 56/2007/S.32/2012. - In exercise of the powers conferred by Sub-section (1) sub-section (2) of section 32 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Central Act 56 of 2007), and all other powers enabling him in this behalf, to carry out the purposes of the said Act, the Governor of Punjab is pleased to make the following rules, namely:-

1. Short title and commencement. - (1) These rules may be called "The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012".

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette."

102. Article 166 of the Constitution deals with conduct of business of the Government of the State and provides that all executive actions of a State shall be expressed to be taken in the name of the Governor. The Punjab Action Plan leaves one groping in the dark looking for the light at the end of the tunnel of Article 166 searching for the Governor's nod. The Punjab Action Plan has neither been through the haloed office of the Governor or the Legislative Assembly as required by section 32 (3) of the MWPSC Act. The State has not explained this lacuna in any of its extensive pleadings put in, in defense of the Action Plan, nor has produced record in the making of the Action Plan in accordance with law to operate as statutory rule to empower the District Magistrate-cum-Maintenance Tribunal with the lethal powers of summary eviction. The two introductions to the Rules and the Action Plan can be profitably compared. The action Plan suffers from procedural lapses in introducing into the Maintenance Tribunal substantive law of eviction for the first time, a provision which is harsh and oppressive.

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Reasonableness of action is a facet of Article 14. The resonant voice of Justice Felix Frankfurter echoes through the decades from his judgment in McNabb Vs. United States, 318 U.S. 332 (1943) and his famous words: "The history of liberty has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law." Read here the reference by Mr. Nanda to case law he cites on powers of Executive Magistrates to record confessions in criminal cases. The McNabb-Mallory rule is of universal application in different directions in a host of laws across the civilized world, both civil and criminal, to preserve the rule of law and the spirit of democracy. Hence to my mind, judgment and utter disbelief, the Action Plan fails to pass the acid tests of judicial review and is held to be still born. The citizen can hardly countenance such an abortion of rights to property in the hands of the executive, notwithstanding the beneficial provisions in the Act.

103. Furthermore, section 32 of the MWPSC Act contemplates the CAP to be prescribed by rules. Sub-section (3) of Section 32 mandates every rule made under the Act shall be laid, as soon as may be after it is made, before the legislature of the State. It is not the case of the State of Punjab that the Notification No.10/20/2014-1DC/353259/1 dated 27.11.2014 issued by the Department of Social Security (Disability Cell) published in the Punjab Government Gazette, Part I, March 13, 2015 (Phgn 22, 1936 Saka) was placed before the Assembly or has suffered the legislative process envisioned under section 32 (3) of the Act. Besides, rule 23 deserves to be read in conjunction with section 2 (e) and sections 22 and 32 of the Act to

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complete the procedural chain with the key links in the Act and not de hors them in order to operate as law of eviction under the Action Plan.

The Andhra Pradesh Experience.

104. The Government of Andhra Pradesh has enacted the "The Andhra Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2011'. The Government have prescribed an Action Plan vide G.O.Ms.No.49, dated 28.12.2011. There was no provision of eviction in the Plan. The Presiding Officer of the Tribunal has no role to play at all for eviction. The only provision under which the Tribunal is conferred with the jurisdiction to intervene in the matter of property of senior citizens is under Section 23 of the Act. The issue came up before the High Court in M.P. in Tej Babu Vs. The State of Telangana, 2016 SCC Online Hyd 79. The Court noticed and dealt with *Shanti Swarup Dewan's* case and distinguished it. The High Court held that the District Magistrate [respondent No.2 therein] "has no jurisdiction whatsoever to allow the application made by respondent No.3 for the reliefs of evicting the petitioner [her son] and handing over of title deeds kept in his custody to her." Holding further that:- "Unless the case falls directly under Section 23 of the Act, the Tribunal cannot exercise its power for adjudicating the disputes concerning the properties of senior citizens." The judgment in *Shanti Swarup Dewan's* case did not apply to a case in Telangana because the facts were dissimilar. The learned single judge in *Tej Babu* explained:-

> "Respondent No.3 has placed heavy reliance on the Division Bench Judgment of the Punjab and Haryana High Court in Justice Shanti Sarup Dewan and another Vs. Union Territory, Chandigarh and others. The facts in that case are that the appellants therein who were a couple and senior citizens, had one son and two daughters. Property bearing H.No.642,

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Sector 11-B, Chandigarh, was purchased by appellant No.1 under conveyance deed dated 29.3.1962 in his own name. He has made additions and alterations to the said house by withdrawing Rs.20,000/- from his G.P. fund. Appellant No.1 has also bought Plot No.694, Sector 6, Panchkula for the benefit of his son and the said plot was transferred to the latter on 30.11.1990. The son of the appellants sold the said plot on 7.11.1991 and from a part of the sale proceeds therefrom he has purchased a plot in Sector 2, Panchkula and constructed a house by utilising the balance sale proceeds. In spite of possessing his own house, the son of the appellants started living with the latter. Simmering differences arose between the appellants and their son and as the appellants found the harassment by their son and daughter-in-law intolerable, they filed a Writ Petition in the Punjab and Haryana High Court. A learned single Judge opined that as the issue of eviction of the son of the appellants needs to be adjudicated by a competent Civil Court, the Writ Petition was not an appropriate remedy. The Division Bench, however, granted relief to the appellants applying the provisions of the Act. It is worthy to note that by the time the said case was decided by the Punjab and Haryana High Court, the Administration of Union Territory, Chandigarh has not framed rules under Section 22(2) of the Act or under Section 32(2)(f) thereof and consequently no action plan was envisaged. The Division Bench, while finding that the son of the appellants had absolutely no right whatsoever to live with his parents in the house which was acquired solely from out of the earnings of appellant No.1, further observed that a proper mechanism for enforcement of the provisions of the Act for protecting the property rights of the appellants under Section 22 of the Act has not been put in place by the Union Territory Administration. Expressing its thorough dissatisfaction on the failure of the Administration of Union Territory in effectuating the provisions of the Act and enforcing the rights of senior citizens, the Court felt that it was not helpless if the State fails to perform its functions

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envisaged under the Act and it accordingly directed the appellants son to vacate the house belonging to his parents.

It needs to be noted that the Division Bench of the High Court, in the Justice Shanti Sarup Dewan (supra), has not made detailed discussion on the contours of sub-section (2) of Section 22 of the Act. Evidently, such a question was not put in issue before it, more so, in the absence of an action plan put in place for protection of senior citizens by the Administration of the Union Territory of Chandigarh. In contrast, the jurisdiction of the Tribunal in the present case is well defined by the Rules. As noted herein before, the Tribunal is excluded from the action plan provided under Rule 21 of the Rules for protection of the property of senior citizens. Unless the case falls directly under Section 23 of the Act, the Tribunal cannot exercise its power for adjudicating the disputes concerning the properties of senior citizens."

105. I do not then feel persuaded enough to read 'eviction' broadly as merely an exercise to fill in the gaps without any direct invocation to Article 162 of the Constitution because the Punjab Action Plan itself traces it origin to the Act and the rules. Deferment of making the action plan for the protection of life and property of senior citizens in rule 23 does not obviate the necessity of incorporating the CAP in the rules itself. Neither can the CAP be born out of a different womb. Neither can the rules or instructions supplant the Act or its intendment, objects and purposes, as is often said. It was even open to the State Government to have enacted its own Act and rules if it claims power to legislate independently and provide for eviction by enacting law. This adds to my belief and confirms it, that the Action Plan of Punjab suffers from the vice of excessive subordinate legislation beyond the confines and context of the parent Act. Subordinate legislation must not be *ultra vires* the enactment or beyond rule making power contained in the

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parent legislation and left to the State to devise or to be read ancillary and incidental thereto for its legal sustenance without the aid of defined parliamentary delegation of authority. The position is acerbated with the categorical stand of the Union of India in the present proceedings that eviction was not contemplated in the Parent Act. Taking this stand to its logical end, the court can deduce that eviction cannot be stealthily introduced into the Action Plans by a mere notification. Eviction in CAP would hardly suffice in the Rule of Law. Even if I presume the Punjab Action Plan had gone through the State Assembly in terms of sub-section (3) of section 32, even then the Act or Rule did not contemplate eviction as a provision for the protection of life and property. Introducing the major concept of eviction as the ultimate weapon of securing the life and property in an Action Plan, the Punjab Government may have actually done disservice to senior citizens in the State. The heart of the court must go out to senior citizens in distress but it cannot at the same time remain unmindful of the law as it stands. There is a wide gap between what 'ought' to be and what 'is' in fact. This is where this case aches.

106. The object of summary eviction may be laudable for protecting rights of senior citizens in distress at the hands of their own flesh and blood but it has to take place in accordance with the enactment, the rules and by a procedure established by law made by parliament and to the extent of delegated authority upon the State. It is well settled that if a thing is required to be done in a particular manner, it should be done in that manner alone or not at all. The mandate of Parliament in the 2007, Act regarding making comprehensive action plans has not been carried out by the Punjab Government in the letter and spirit of the law. This principle was approved

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and accepted for the first time it appears in Taylor Vs. Taylor, [1876] Ch. D. 426 and later by the Privy Council in Nazir Ahmad Vs. Emperor, AIR 1936 PC 253. In Ramchandra Keshav Adke Vs. Govind Jyoti Chavare, AIR 1975 SC 915 the Supreme Court followed the dictum in a case of tenancy rights under the Bombay Tenancy Act, 1948 [s.5 (3) 9b)] holding, inter alia, that:-

> "A century ago, in Taylor v. Taylor(1), Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor (2) and later by this Court in several cases (3), to a Magistrate making a record under ss.164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other methods of performance are necessarily forbidden. This rule has stood the test of time"(4) [Maxwell's Interpretation of Statutes, 11th Edn., pp, 362-363]"

107. In a catena of precedents the Courts have proliferated the principle at both the constitutional levels. See with advantage, two of those Supreme Court rulings in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala, AIR 2001 SC 3868; Commissioner of Income Tax Vs. Pearl Mechanical Engineering and Foundry Works Pvt. Ltd, (2004) 4 SCC 597 etc. on the point.

108. This is especially true when parliament in its legislative pre-eminent power to make laws falling in a field covered by List I and III of the Seventh Schedule has itself laid down the methodology in the Act for the State Governments to act in the manner ordained while framing the CAP restricted to the clear verdict of the definition of the word "prescribed" in

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section 2 (e) and circumscribed it to be done within the framework of section 22 of the rules in matters comprising things enumerated in section 32 (f) of the Act, then I think full effect has to be given to the mandatory provisions of the Act and the procedure laid down to make rules read together as a whole with the jurisprudentially specific word 'eviction' and what that entails conspicuously missing therein, therefore, the Punjab Action Plan stands outside in the rain in its foreign cap without an umbrella.

109. The language of the Act in Section 2 (e), 22 & 32 (f) is absolute, explicit, and peremptory. It leaves no room for eviction through the CAP de hors the Act and the State rules. Subordinate legislation in relation to a State can only be framed under powers conferred by a Central Act in a subject field, if the Act gives rule-making authority to the State, then Sate must act according to the mandate Parliament without exceeding the scope of the principal delegating Act. Rule 23 of the Punjab rules staggers the CAP to a future event without making any effort to make the CAP through the substituted legislative process or an impact study of what eviction power in the hands of an executive authority might entail. This I believe is the crux of the matter.

110. The Punjab Government could have incorporated its eventual plan if it wanted to go to the extent of providing for eviction as a means of providing protection of life and liberty of senior citizens in the rules in 2012 or by amending it, subject to the challenge that the Act itself does not provide eviction, as the Central Government asserts in its written response. The Government sat back satisfied with its work from 2012 to 2014 and then again, till the directions in *Shanti Sarup Dewan* case came to be issued in the Chandigarh case at a time when neither of the two States and the Chandigarh

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Administration had promulgated the CAPs under section 22. There is no direction in the judgment, that I can read, for the State Government to make CAP in the manner not 'prescribed' in the Act which is the combined mandate of ss.2 (e), 22 & 32 (f) of the Act. The issue arising in this case had not arisen in September 2013 when the judgment was pronounced in *Shanti Sarup Dewan* case. Therefore, in the humble opinion of this court, the Punjab Action Plan does not qualify as a legally enforceable instrument nor can pretend to be a substantive law in the matter of eviction introduced through an adjective provision by sub-sub delegation which cannot exist independently as executive instructions breathing life on their own in view of invocation of the provisions of the Act in the notification which brought the Action Plan into force.

111. The State Government is not the legislative policy maker for the protection of property of senior citizens from its own Assembly but on the other hand is only an implementer of the enacted policy of Parliament in the MWPSC Act. As far as life of senior citizen is concerned the States are exclusively empowered by the relevant Schedules in the Constitution to maintain law and order. The Punjab Government must be pinned down to act within the circumference of the parent Act. The Court is advised by binding precedents delivered from the Supreme Court to avoid reading personal visions of equity, compassion, sympathy, empathy, kindness, altruism, benevolence and understanding in a case in favour of one or the other party, however much the court might want to indulge would render the decision and the decision-making process critically sick if the Action Plan does not confer authority to evict on the Maintenance Tribunal. Even beneficial legislation can't be stretched beyond the confines of the law and to the

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breaking point in the grave matter of eviction beyond the provisions of the Parent Act. It is a matter of jurisdiction conferred by law. Jurisdiction in its simplest terms means the limits of authority conferred by law to decide a dispute by a binding decree.

Violation of Section 32 (3) in the Punjab and Haryana Actions Plans.

112. Records of making of the Actions Plans of both the States in 2014 and 2015, respectively, reveal that the Plans were not routed through the Legislative Assemblies. To confirm this I requested Mr. Sandeep Kumar, Deputy Advocate General, Punjab, who is regularly appearing and assigned duties in this Court, to ask and confirm the fact whether the CAP was remitted to the Legislative Assembly from the office of the Advocate General, Punjab in consultation with the Government. On 15.01.2020, Mr. Sandeep Kumar returned with the remarks on behalf of the Advocate General, Punjab. The sheet containing Note dated 08.01.2020 put up by Mr. Sandeep Kumar, Deputy Advocate General, Punjab before the Advocate General, Punjab and the hand-written remarks made at the bottom thereof by Ms Amanat Chahal, Assistant Advocate General, Punjab is taken on record as Mark 'Z'. Note and the remarks thereon are reproduced as follows:

"For the kind perusal of Ld. Advocate General, Punjab

Subject: CWP No.4744 of 2018 titled as Simrat Randhawa Vs. State of Punjab & others.

Respected Sir,

With due respect, it is submitted that in the above mentioned Civil Writ Petition the judgment was reserved on 30.09.2019 by the Court of Hon'ble Mr. Justice Rajiv Narain Raina. The copy of the order dated 30.09.2019 is attached herewith.

The Hon'ble Court has verbally directed the undersigned to inform the Ld. Advocate General, Punjab to

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ascertain and inform the Hon'ble Court about the file pertaining to the issue involved in the above mentioned Civil Writ Petition has been put up before the Legislative Assembly, Punjab.

Submitted please,

With regards,

Yours sincerely,
Sd/-
(Sandeep Kumar)
Deputy Advocate General, Punjab

"As per the information received from the department, the Action Plan was not placed before the Legislation. There is no provision in the statute to place the same before the Legislation.

Amanat Chahal
Assistant AG, Punjab"

113. The Haryana file was produced in its entirety by the office of the Advocate General, Haryana. It has been perused. The Haryana Plan is nothing but cut-copy-paste of the Punjab Plan without a shimmer of application of mind. The only difference between the two is that at least the Haryana Plan pays lip service in the name of the Governor. The Punjab Government did not think it fit to make the notification in the name of the Governor explaining on a court query that: "*There is no provision in the statute to place the same before the Legislation.*" I do not think this difference can save either of the Plans from being declared ultra vires the MWPSC Act and their respective rules for the many reasons recorded in the course of this order.

On the exclusion of the civil courts' jurisdiction.

114. In cases where the exclusion of the civil courts' jurisdiction is expressly provided for and when van it be inferred there is an illuminating discussion on the subject by a Constitution Bench of nine Hon'ble Judges of

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the Supreme Court in Dhulabhai and others Vs. The State of Madhya Pradesh and others [decided on 5 April, 1968 in a Tax matter] reported in AIR 1969 SC 78 (CB), which is as follows:

> "An enquiry into the diverse views expressed in the decisions of this Court shows that an exclusion of the jurisdiction of civil court is not readily to be inferred unless the following conditions apply:-
>
> > "The result of this inquiry into the diverse views expressed in this Court may be stated as follows:-
> >
> > > (1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
> > >
> > > (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
> > >
> > > Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally

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associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) x x x

(6) x x x

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

115. In Ghan Shyam Das Gupta & another Vs. Anant Kumar Sinha & others, AIR 1991 SC 2251, the Supreme Court observed:-

> "The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better."…"The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions."

This suitably answers the argument of the State of Punjab that against the order of the District Magistrate acting as a Maintenance Tribunal a writ lies and that is adequate protection against eviction. Even unauthorized occupants of public property possess right of appeal to the District Judge against the order of the District Magistrate. That is a

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significant procedural safeguard. Thereafter a writ lies. But writs of certiorari and mandamus along with the other three are extraordinary and discretionary remedies.

116. Accordingly, in view of all that is said before, the arguments of the senior counsel Mr. Anupam Gupta and Mr. Satya Pal Jain are accepted while those of the Mr. Bali, Senior Advocate and Mr Momi for the private respondent and of both the Advocates General are rejected.

117. For the variety of reasons recorded above, and upon a consideration of the entire case, this Court is inclined to answer the issue framed, holding that:-

(i) Clauses 1 to 3 of The Punjab Action Plan, 2014 are *ultra vires* the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 and are accordingly struck down as unconstitutional.

(ii) The Action Plan arbitrarily introduces a concept foreign to the scheme in MWPSC Act, that is, "eviction" or ejectment [in this case, of the daughter-in-law] and is therefore, declared arbitrary, unreasonable, oppressive, harsh and unconstitutional and contrary to the doctrine of the Rule of Law and Separation of Powers as the basic features of the Constitution of India and thus violate oppressively Articles 14 and 300A against those who possess tangible and intangible rights that can be determined only by the civil court. This principle would

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also apply to the Haryana Action Plan, 2015 as it is a mirror image of the Punjab Action Plan, 2014 and suffers from the same infirmities. Only because the Haryana Action Plan has been notified in the name of the Governor will not save it so far as eviction is concerned.

(iii) The Punjab Action Plan, 2014 is at the most in legal status equal to a notified Government Order or an Office Memorandum devised outside the Parent Act and the Punjab Rules, 2012 lending power to evict and the District Magistrate acting as a Maintenance Tribunal under Section 7 to decide "upon the order for maintenance under section 5" of the MWPSC Act does not possess the draconian power of eviction from property. It is non-statutory for eviction and therefore impermissible and unsustainable in law.

(iv) The Action Plan has not been prescribed in the Rules and to the extent of eviction and thus it is beyond the powers delegated by Parliament in the MWPSC Act. The Punjab Action Plan is an executive order and the District Magistrate does not possess the power of eviction. The Action Plan is open to wide abuse of the process of law in the hands of the executive.

(v) The stand of the Union of India is accepted as the correct legal position that power of eviction was not visualized, intended or enacted in the Parent Act by Parliament nor can be entrusted to the Maintenance Tribunal.

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(vi) The Act did not authorize the State Government and its officers for executing a summary procedure for eviction to subvert substantive rights, disabilities and obligations under the MWPSC Act and the actionable rights under the personal civil law, to the peril of the respondent, where neither maintenance nor neglect nor transfer of property is involved.

(vii) The Maintenance Tribunal is not an Eviction Tribunal. Eviction can take place only in accordance with procedure established by law and by reading in the Act rights to property under Article 300-A of the Constitution as explained by the Supreme Court in *K.T.Plantation* case as a ground of challenge, that is, the Rule of Law as part of the basic structure and Separation of Powers albeit there is no absolute rigidity in the dividing lines of the three pillars of a democratic republic and the State.

(viii) The MWPSC Act does not provide for relief of eviction *simpliciter*, but at best as a consequential relief under Section 23 of the Act for void transfers.

(ix) It appears not to have been the intention of Parliament to create a law on title based eviction under the Act, let alone a summary procedure for eviction and, on the other hand operates where senior citizens have been taken advantage of or exploited by people or family to grab their property with ulterior motives and leave them in a

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lurch in their old age with no succour and redemption available.

(x) Notwithstanding it is illegal and arbitrary, The Action Plan does not lay down any guidelines to control, guide or supervise such extreme harsh and tyrannical quasi judicial powers by the District Magistrate. In that sense it does not qualify as a "comprehensive action plan" in section 22(2) of the Act.

(xi) Protection is for only those defined in "children" [s.2 (a)] or family, who have actionable claims to property and subsisting rights in property of senior citizen duly asserted in a court of law. However, the wide meaning of "property" in section 2 (f) is for purposes of maintenance and section 23 of the Act.

(xii) The wide definition of "property" in section 2 (f) in the MWPSC Act covering both self acquired and ancestral property including rights or interests in such property is for purposes of maintenance and welfare of senior citizens and cannot be imported for eviction through the Punjab Action Plan.; as also for declarations of transfers of property to be rendered void in certain circumstances under section 23 of the Act. These aberrations and callousness of children and their neglect of senior citizens for their maintenance and welfare of their physical and emotional needs, the Maintenance Tribunal

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as a speedy remedy can alone manage to the exclusion of the civil courts.

(xiii) The argument that aggrieved party has remedy of writ petition under Article 226 and 227 of the Constitution and therefore there is a substantial safeguard against arbitrary, illegal and erroneous orders open to correction in certiorari is rejected. For one, the remedy is discretionary and extraordinary and not plenary of the kind the civil and appellate courts traditionally exercise. The remedy of civil suits under the Code of Civil Procedure, 1908 is more wholesome than the jurisdiction under the writ jurisdiction under the Constitution as it admits recording of evidence in proof of facts. The writ remedy comes into play after eviction, when enforcement of the order is also in the hands of the executive with the police at its command. The Action Plan in eviction is unfair, arbitrary, unreasonable and oppressive as against family member [and not a foreigner to the family unit or rank outsider] and is excessive and therefore unconstitutional. It cannot be used as a tool for eviction and in abuse of the process of the law.

(xiv) The wide import of the issues in the civil suit filed prior to coming into existence of the Action Plan and pending adjudication of civil rights of the petitioner and her children in litigation with the defendants are far too significant to be sacrificed to a sudden termination of

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long settled possession leaving them to litigate from the outside and after the event of eviction has been played out. I am of the opinion that Parliament never contemplated such a drastic situation in the MWPSC Act of what the Plan adventures to do and Parliament expressly limited itself to maintenance rights under Chapter II [ss. 4 to 18] and protection of reversing transfers and release deeds under section 23 [Chapter VI], which was a giant leap forward for the welfare of senior citizens against apathy of children inflicting physical and emotional neglect on their parents in old age. That is a pious duty and obligation of every child and grandchild irrespective of caste, creed or religion recognized in the Constitution. The two elements i.e. maintenance rights and voidable transfers of property or are not present in this case nor were pleaded in the complaint that fired the present litigation.

(xv) The Act, the Rules and the Action Plans in the States of Punjab & Haryana [which are cut copy paste] cannot be viewed as a convenient and brutal tool in the hands of executive officers acting as Maintenance Tribunals, who are servants and agents of the State to evict the respondent 'right asserter' only on the specious ground of title and ownership in the applicant without anything more to do with the law.

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(xvi) The Punjab Action Plan – 2014 does not have any statutory backing. It is well settled that every executive action must have legislative sanction. It has also not been issued in the name of the Governor or placed in the Assembly at any time till the present.

(xvii) Life is awfully complex and errant laws can often compound it. Each family is faced with its own peculiar situation that cannot be typified in one mould of the law for every family and their elders in the Action Plan to persuade this court to subscribe to the power of eviction in the District Magistrate on a transitory posting in the District. On the other hand the judicial courts are static and available on every working day for the litigating public. A family's own special needs, circumstances and expectations of each other are variables and their station in life, their social standing, their financial position can be vastly different that they cannot be measured on the same scale and with one brush of a heartless Government order in the Action Plan which Parliament did not devise. Parliament ordained a "comprehensive action plan" in section 22 (2) but the Plans are far from being comprehensive in nature. The Action Plan cannot cover all cases based on title alone when rights of *spes successionis* germinate with conception as per the Hindu law [which are chances of succession] and mature on birth. India has to contend with unique personal laws of

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its many people of different religions and faiths. Therefore, each case has to be decided on its own facts and circumstances on the basis of evidence. Had the direction not come in *Justice Shanti Swarup Dewan's* case in September 2013, I dare say, the Action Plans of Punjab and Haryana may not have been born although it was a statutory duty neglected for years since the MWPSC Act was passed in 2007.

(xviii) Laws of land reform in India [making way to a modern nation free of feudalism was a great leap forward], such as abolition of titles and zimindaries, Land Ceiling, Surplus, granting tenancy rights to downtrodden marginal and toiling *siris*; the bonded labour and the tillers of land maturing rightfully into title and legal possession of land cultivated by them till the Republic day with the protection of Central and local laws and the peculiar and special principles of Hindu Law unparalleled across the globe etc, all of which have greatly contributed to a new social order impacting the landed aristocracy and 'big landowners' to device ways and means to save their properties from being taken over by the State's eminent domain by effecting dispossession from excess lands to be redistributed to the landless. This has led to complexities in litigation which happens only in India. Only Judges should handle this and not the executive officers of the State empowered under a notified and non-

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statutory Government order to dispossess a daughter-in-law, like the petitioner, of their lawful rights pressed in the civil courts of justice in accordance with law seeking declarations of status and those based on settled continuous possession-[as explained in *Major Harmohinder Singh* (supra)].

118. Accordingly, the rights of the parties are left wide open to be determined by the civil courts at Patiala which are requested to expedite the proceedings and conclude the suits as soon as possible by desisting from any unnecessary adjournments in the light of the directions already issued in CR No.4238 of 2015 [see paragraph 17, supra] with the status quo order in respect of the properties of the parties operating. Needless to say, nothing said in this judgment will be read as an expression of opinion on the merits of the cases pending in the trial court.

119. As a result, this petition is allowed and the impugned order/s of eviction dated 14.11.2017 endorsed on 01.01.2018 passed by the District Magistrate-cum Maintenance Tribunal, Patiala as well as the order in review are invalidated and set aside.

23.01.2020 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

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