DRAUPADI DEVI AND ORS. A

v.

UNION OF INDIA AND ORS.

SEPTEMBER 9, 2004

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.] B

Constitution of India, 1950:

Article 363—Act of State—Dispute related to character of suit property flowing from pre-constitution covenant—Bar to interference by Courts in disputes arising out of certain treaties, agreements, etc.—Held, dispute beyond jurisdiction of Court. C

Article 372—Commands of 1940 and 1948 allegedly issued by Maharaja of Kapurthala—Even if assumed to be proved—Not saved as pre-constitution laws. D

Article 77—Authentication of instruments made and executed in the name of President—Not applicable to pre-constitution instruments.

Covenant Dated 05.05.1948—Executed by Rulers by which erstwhile States merged into Union of States—Articles VI and XII—Provisions of—Discussed. E

Property:

Instrument of Accession, White Paper on Indian States, **aide memoire** *Dated 01.03.1937 prepared by Lt. Col. Fisher—Title to property—Suit property whether private property or State property—Effect of historical developments—Test of user of property—Non-recognition by Government of India of suit property as private property—No documentary evidence to prove title—Held, suit property is State property.* F

Limitation Act, 1908—Section 3—Schedule—Article 120—Absence of pleading as to when cause of action arose—Ascertainment of time of cause of action on appreciation of evidence—Time limit for filing suit—Six years—Suit filed after nine years—Held, Court was mandated to dismiss suit. G

Code of Civil Procedure, 1908—Order VII, Rule 1 (e)—Requirement of H

A *plaint-fact constituting the cause of action and when it arose.*

The issue that arose for consideration in these appeals was whether the suit property was the private property of the Ruler of Kapurthala State recognised as such by the Government of India or whether it was the State property of Kapurthala State.

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Dismissing the appeals, the Court

HELD : 1.1. The correspondence by Maharaja of Kapurthala with the Government of India does not indicate that he was raising a dispute with regard to the immovable properties outside Kapurthala State. On the contrary, it suggests that the Maharaja having agreed to the decision taken in the meeting with Government of India's representatives, was attempting to prevail upon Government of India to declare some of the properties as his personal properties. By signing *aide memoire* as early as 01.03.1937, the Maharaja of Kapurthala accepted that suit property was State property. [234-E, F; 237-H; 238-A]

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1.2. The Maharaja never made an assertion of rightful title to suit property, his efforts being directed towards wresting greater concession. The Division Bench rightly analysed the evidence on record and came to the finding that till 1934, the incomes from Oudh estates and Kapurthala State were treated as one consolidated account. It was on the advice of Lt. Col. Fisher that the accounts were separately maintained after 1936. The High Court was justified in its finding that the Maharaja of Kapurthala had clearly admitted that the income from Oudh estate formed an integral part of State of Kapurthala and all along maintained in his correspondence with the Government of India that the nature of the suit property could not be decided merely from the source of income aspect. [238-D, E; 239-C]

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2.1. To merge or not to merge with Dominion of India was a political decision taken by the sovereign Ruler and the instrument of accession dated 16.08.1947 and covenant dated 05.05.1948 were, without doubt, acts of State. Article XII ensured certain rights to the Ruler with regard to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of the State to the Raj Pramukh. Clause (3) of Article XII provides that a dispute arising as to whether any item was the

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private property of the Ruler or State property was referable to a nominee of Government of India and such nominee's decision would be final and binding on all the parties concerned, provided that such dispute was to be referred by the deadline of 31.12.1948. If the Ruler of the covenanting State claimed property to be his private property, and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by Clause (3). Government was not obliged to refer the dispute upon its failure to recognise it as private property. The dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the covenant and, therefore, not adjudicable by municipal Courts as being beyond the jurisdiction of the Municipal Courts by reason of Article 363 of the Constitution of India. The issue as to whether the Government of India was obliged to recognise the private property of the Ruler of Kapurthala, and whether, under the terms of the covenant (Article XII of the covenant), the Ruler was entitled to have it thus recognised, are disputes which are clearly barred by Article 363 and the Court had no jurisdiction to decide the said issues. [243-G; 244-A, B, C, F, G; 245-D]

Virendra Singh & Ors. **v.** *The State of Uttar Pradesh,* **[1955] 1 SCR 415, disapproved.**

State of Gujarat **v.** *Vora Fiddali Badruddin Mithibarwala,* **[1964] 6 SCR 461, relied on.**

Vaje Singhji Jorwar Singh **v.** *Secretary of State for India,* **(1924) LR 51 I.A. 357;** *Jagannath Agarwala* **v.** *State of Orissa,* **[1961] 1 SCR 1957;** *M/s Dalmia Dadri Cement Co. Ltd.* **v.** *Commissioner of Income Tax,* **[1959] SCR 729;** *Pramod Chandra Deb & Others* **v.** *State of Orissa,* **[1962] Suppl 1 SCR 405;** *State of Saurashtra* **v.** *Jamadar Mohamad Abdulla & Others,* **[1962] 3 SCR 970;** *Johnstone* **v.** *Pedlar,* **[1921] All ER 176;** *State of Saurashtra* **v.** *Memom Haji Ismail Haji,* **[1960] 1 SCR 537 and** *H.H. Maharajadhiraja Madhav Rao Scindia Etc.* **v.** *Union of India and Another,* **[1971] 1 SCC 85, referred to.**

3. Rights available to erstwhile Ruler and his subjects are of no avail till there is recognition of such rights. The argument of *lex situs* **could have perhaps prevailed, if the Government of India at any point**

A of time had recognised the suit property as the private property of Maharaja of Kapurthala, and, after the coming into force of the Constitution, attempted to take it away otherwise than by a constitutionally valid legislative enactment. In fact, no such recognition was granted. Merely because the decision not to recognise was conveyed to the plaintiff in the year 1951, the act of Union of India did not cease B to be an act of State, nor does it fall outside the protective umbrella of Article 363 of the Constitution of India. [249-E, F]

4. Even assuming that the appellants are right in the contention that the decision not to recognise the suit property as private property C of the Maharaja of Kapurthala, was required to be and not taken in the manner contemplated by Article 77, it would only mean that there was no decision. The plaintiff cannot succeed by merely showing that the Government of India had failed to arrive at a decision on the issue. He must further show that Government of India had recognised the suit property as private property of the Ruler of Kapurthala as that could D be the only foundation for his title. Further, if the act of recognition or non-recognition of the suit property as private property is relatable to instrument of accession made in 1947 and the covenant executed in 1948, the decision would also relate back to the date of the covenant, and on that date Article 77 of the Constitution was not in existence. It E would be incorrect to judge the validity of that decision relatable to the covenant executed in 1948 by the Constitution of India, which came into existence much later. [250-H; 251-A, B, C]

State of Gujarat v. *Vora Fiddali Badruddin Mithibarwala,* [1964] 6 SCR 461, relied on. F

State of Rajasthan and Anr. v. *Sripal Jain,* AIR (1963) SC 1323; *L.G. Chaudhari* v. *The Secretary, L.S.G. Dept., Govt. of Bihar and Ors.,* AIR (1980) SC 383 and *Vishnu Pratap Singh* v. *State of Madhya Pradesh and Ors.,* [1990] 1 SCR 43, referred to.

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State of Punjab & Ors. v. *Brigadier Sukhjit Singh,* [1993] 3 SCC 459, dissented from.

5. The decision of the Government of India not to recognise the suit property as private property of Maharaja was taken some time in the H year 1951, whether in March or May. Dewan Jarmanidass, the plaintiff

and the Maharaja were very much aware of this decision. Yet the suit was filed only on 11.05.1960. Under Article 120 of Limitation Act, 1908 the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when right to sue accrues. The suit was clearly barred by limitation and by virtue of Section 3 of Limitation Act, 1908, the Court was mandated to dismiss it. [252-G; 253-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3861 of 2001.

From the Judgment and Order dated 8.12.2000 of the Delhi High Court in C.W. No. 1612 of 1987.

WITH

C.A. No. 3862 OF 2001.

Joseph Vellapally, Anil Sharma, Rajiv Endlaw, Vijay Gupta and Navin Prakash for the Appellants.

Kapil Sibal, Sr. Adv. with Mrs. Avinash Ahlawat, Mrs. Rani Chhabra, Brajesh Kumar, Mrs. Sudha Pal, Mohit Madan, Mrs. Rashmi Chopra, Ms. Seema Nair, Shreekant N.Terdal, Hemant Sharma, D.S. Mahra, Ajay Sharma, Mrs. Sushma Suri, Anil Mittal, S.D. Jain and Dr. Kailash Chand for the Respondents.

The Judgment of the Court was delivered by

SRIKRISHNA, J. :

Civil Appeal No. 3862 of 2001 :

This appeal by special leave impugns the judgment dated 8.12.2000 rendered by the Division Bench of the Delhi High Court in an appeal RFA (OS) No. 19 of 1989. The Division Bench overturned the decree granted by the learned Single Judge and dismissed the suit of the original plaintiff. Legal representatives of the original plaintiff are appellants before us while the three defendants in the suit (Union of India, State of Punjab and Sukhjit Singh) are respectively the respondents before us. For the sake of convenience, we shall refer to the parties as arrayed in the suit.

A *Facts :*

The plaintiff instituted a suit in 1960 before the Civil Court at Delhi which ultimately came to be transferred to the Original Side of the Delhi High Court and was disposed of by a learned Single Judge. The suit was for declaration of title to the property being land and building situated at 3, B Mansingh Road, New Delhi.

By an indenture of lease dated 13.7.1921, Khan Bahadur Abdul Hamid, the then Chief Minister of Kapurthala State, had been granted a perpetual lease of the plot of land situate at 3, Mansingh Road, New Delhi. He raised C a construction thereupon called 'Kapurthala House'. It is this land together with the structures thereupon which is the subject matter of the suit and shall henceforth be referred to as 'the suit property'.

Khan Bahadur Abdul Hamid sold the house to Jagatjit Singh, the then Maharaja of Kapurthala, by a registered sale deed dated 19.1.1935. The D records of the Land and Development Office were mutated and Maharaja Jagatjit Singh was recorded as the owner of the suit property.

The title to the suit property was claimed by the plaintiff on the ground that the plaintiff had purchased the suit property by a registered sale deed E dated 10.1.1950 for a consideration of Rs. 1.50 lacs from Maharaja Paramjit Singh, son of late Maharaja Jagatjit Singh, erstwhile Ruler of Kapurthala State, who was the rightful owner thereof and in whose name the property stood mutated in the official records of the Government at the material time.

Kapurthala was a Sovereign State (1928-1948) till its merger in 'Patiala F and East Punjab States Union' (hereinafter referred to as 'PEPSU') and subsequent merger of PEPSU into the Dominion of India.

It is the case of the plaintiff that Maharaja of Kapurthala, Jagatjit Singh, owned properties extensively, some of which were owned by Kapurthala State, (also referred to as 'Kapurthala Darbar') while some others were G owned by him in his personal capacity purchased out of the personal funds of the Maharaja.

The plaintiff claimed that the suit property was one such property which had been bought by Maharaja Jagatjit Singh out of his personal funds and, H hence, it was the personal property of the said Maharaja.

The plaintiff pleaded that on 1.3.1937 Lt. Col. C.P. Fisher, the then Prime Minister of Kapurthala State, had prepared an *aide memoire* in respect of the financial arrangements pertaining to bifurcation of Oudh estate income and rest of the Kapurthala State income and other matters. There is no dispute that in this *aide memoire* Lt. Col. Fisher had listed out the properties held by the Kapurthala State and the private properties of the Maharaja separately. It is also common ground that the suit property was described as State property in this *aide memoire* prepared by Lt. Col. Fisher.

The plaintiff alleged that on 1.1.1940 the then Maharaja of Kapurthala State in his capacity as a Sovereign Ruler of the State had issued a 'command' under the signature of Tika Raja, (heir apparent), President State Council, commanding that in future all the houses in Mussoorie and Kapurthala House in New Delhi would be considered as his personal and private property and that the *aide memoire* dated 1.3.1937 shall be inoperative and ineffectual so far as the said properties were concerned.

Maharaja Jagatjit Singh died sometime in 1940 and all his properties including the suit property passed on to his eldest son Paramjit Singh, who became the Maharaja of Kapurthala and was recognised as such by the Government of India. The plaintiff claimed that by a duly registered deed of conveyance dated 10.1.1950 Maharaja Paramjit Singh had sold and conveyed the suit property jointly to the plaintiff and one Dewan Jarmani Dass for a consideration of Rs. 1.50 lacs. It is also the plaintiff's case that, subsequently, Dewan Jarmani Dass, who had been shown as vendee only for the purpose of 'convenience', conveyed all his right, title and interest in the suit property to the plaintiff by a duly registered indenture of transfer dated 21.2.1951. Thus, the plaintiff claimed that he had full title to the suit property and sought the declaration and reliefs as indicated.

If history had not overtaken him, the plaintiff perhaps would have had no problem for successful culmination of his suit. Historical developments left their impact on the aforesaid transaction the plaintiff had with the Maharaja of Kapurthala and for that reason they need careful notice.

The Independence Act was enacted in 1947 and all the independent Sovereign Rulers of the States in India were successfully persuaded to sign instruments of accession. As recorded in the 'White Paper on Indian States' published by the Government of India in 1948 (of which judicial notice has

A been taken by this Court in several cases), the strategy adopted by the Government of India immediately before independence was to persuade individual States to sign instruments of accession for accession of the States to the Dominion of India on three subjects, namely, defence; external affairs and communication.

B The accession of the Indian States to the Dominion of India was the first phase of the process of fitting them into the constitutional structure of India. The second phase which rapidly followed, involved a process of two-fold integration, the consolidation of States into sizeable administrative units, and their democratisation[1].

C Where there were small States, they were persuaded to form Unions of States on the basis of full transfer of power from the Rulers to the people. These Unions were to be headed by a Rajpramukh as the constitutional head of the State who was to be elected by the Council of Rulers[2].

D Pursuant to this strategy, the Rulers of all individual States were persuaded to enter into an instrument of accession dated 16.8.1947 with the Government of India. This was then followed by covenants between different Rulers by which the Unions of States was brought into existence, which were to be finally merged into the Dominion of India.

E As far as the present appeal is concerned, it is significant that the States of Kapurthala, Jind, Nabha, Faridkot, Malerkotla and the States of Nalagarh and Kalsia came together and entered into a covenant on 5.5.1948. The Division Bench has reproduced the full text of the covenant executed on 5.5.1948 by the Seven Rulers including the Maharaja of Kapurthala by which F the erstwhile seven States merged into a Union of States. The general effect of the said covenant was that the covenanting States agreed to unite and integrate their territories in one State with a common executive, legislature and judiciary by the name of 'Patiala and East Punjab States Union' (PEPSU) which was referred to in the covenant as 'the Union'. Articles VI and XII G of the said covenant provided as under:

"ARTICLE VI

(1) The Ruler of each covenanting State shall, as soon as may be

1. Para 86, Part V, p. 38 of the White Paper on Indian States.
H 2. Para 125 ibid.

practicable, and in any event not later than the 20th of August, 1948, make over the administration of his State to the Raj Pramukh and thereupon -

(a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting States shall vest in the Union and shall hereafter be exercisable only as provided by this covenant or by the Constitution to be framed thereunder;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it;

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the Union, and

(d) the military forces, if any, of the Covenanting State shall become the military forces of the Union.

ARTICLE XII :

(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

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

Provided that no such dispute shall be so referable after the 31st of December, 1948."

A The organisation of the different organs constituting the administration of the PEPSU was indicated in the covenant. There were also an elected Raj Pramukh and an Up-Raj Pramukh who were to be appointed in the manner indicated in the covenant for carrying out the administration of the PEPSU. There were several other details with regard to the Union of PEPSU and for B privy purses to be paid to each of the erstwhile Rulers. To this covenant, the Government of India in the Ministry of States was a party and the Government of India declared: "The Government of India hereby concur in the above Covenant and guarantee all its provisions." The said covenant was signed on behalf of the Government of India by V.P. Menon, then Secretary to the Government of India in the Ministry of States.

C

The White Paper on Indian States further records that on 15.7.1948 the Patiala and East Punjab States Union was inaugurated. Soon thereafter, the second step of integration took place.

D Then followed correspondence between the Maharaja of Kapurthala and the Government of India on the issue of fixing his privy purse as well as bifurcation and recognition of the properties owned by him into State and private properties.

The Maharaja of Kapurthala kept pleading with the Government of E India that he had ruled the State of Kapurthala as a model Ruler; that in recognition of his signal services to the British Government he had been granted the estates in Oudh income from which he was gracious enough to divert to the State treasury of Kapurthala as Kapurthala income was very low; that his personal income from Oudh estates and the State income of F Kapurthala were merged till 1937 and that it was only as the result of the efforts of Col. Fisher that a bifurcation was made with the Oudh estates being earmarked as personal income of the Maharaja. The Maharaja, therefore, pleaded with the Government of India that some of the immovable properties purchased by him outside Kapurthala State such as in Mussoorie and Delhi be permitted to be retained by him as his private properties and that the G Government of India should declare them to be so.

The White Paper on Indian States indicates that the case of each Ruler was considered individually and a decision was taken in each case depending on the facts and circumstances pertaining thereto. Paragraph 157 in Part VII H of the White Paper on Indian States places on record the manner in which

the Government of India solved this complex problem of distinguishing between private properties and State properties owned by the Rulers. The State properties were merged finally into the Dominion of India while certain properties recognised as private properties were permitted to be retained under the full ownership of the erstwhile Rulers. Para 157 of the White Paper on Indian States reads as follows:

> "157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned their respective States. With the integration of States it became necessary to define and demarcate clearly the private property of the Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions and customs differed from State to State, there were to precedents to guide and no clear principles to follow. Each case, therefore, had to be decided on its merit. The Government of India were anxious that the new order in States should be ushered in an atmosphere free from any controversies or bitterness arising from any unhappy legacy of the past. A rigid and legalistic approach would have detracted from the spirit of good-will and accommodation in which the political complexion of the States had been so radically altered. By and large the inventories were settled by discussion between the representatives of the Ministry of States, the Rulers concerned and the representatives of the Governments of the Province or the Union as the case may be. The procedure generally adopted was that after the inventories had been received and scrutinised by the Provincial or the Union Government concerned and after the accounts of the States taken over had been examined, the inventories were discussed across the table and settled in a spirit of give and take. In all discussions with the Rulers of the States forming Unions, the Rajpramukhs were associated; the private properties of Rajpramukhs were settled by the Government of India in informal consultation with the Premiers of the Unions. This method made it possible to settle these properties on an equitable basis within a remarkably short period and without recourse even in a single case to arbitration. The settlements thus made are final as between the States and the Rulers concerned."

Although, generally, user was the criterion for distinguishing State

property from private property, there was no such hard and fast rule, and depending on the facts and circumstances of each case appropriate decision was taken by settlement with the Ruler concerned. This process was obviously a long one stretching from 20.9.1948 (the last date for furnishing to the Raj Pramukh the inventory of all the immovable properties, securities and cash balances held by the Rulers as private property) till the actual date of the decision. Article XII of the covenant of accession provided that if there was a dispute as to whether any item of private property of the Ruler or State property, it would be decided by a nominee of the Government of India appointed in consultation with the Raj Pramukh and the decision shall be final and binding on all parties concerned, provided that no such dispute was referable after 31.12.1948. According to the recitals in the White Paper, in all cases the decision jointly taken by the Government of India after discussion with the Ruler concerned and the Raj Pramukh was accepted by the Ruler and no case was referred for arbitration as provided under Article XII of the covenant.

The correspondence between Maharaja of Kapurthala, Jagatjit Singh, his son Paramjit Singh (Tika Raja) with the Government of India which has been extensively quoted in the judgments of the learned Single Judge and the Division Bench bears out what is stated in the White Paper. The tenor of the letters written by the Maharaja to the Government of India does not indicate that the Maharaja was raising a dispute with regard to the immovable properties outside Kapurthala State. On the contrary, the tenor of the correspondence emanating from the Maharaja suggests that, having agreed to the decision taken in the meeting with the Government of India's representatives he was attempting to prevail upon the Government of India to declare some of the properties as his personal properties for reasons which he advanced. It is interesting to notice that at no point did the Maharaja of Kapurthala take up the stand that the properties owned outside the Kapurthala State, particularly the suit property in Delhi, was beyond the purview of the covenant and was his exclusive personal property.

During the ongoing process of identification and bifurcation of the immovable properties into State and personal properties, Maharaja Jagatjit Singh attempted to sell some land. On coming to know of the move of the Maharaja, on 19.3.1949 a telegram (Ex.D2W4/1) was sent by the Raj Pramukh to Maharaja Jagatjit Singh calling upon him to refrain from doing

so when the process of identification of properties was going on. A

While the discussions with the Government of India for identification and classification of immovable properties held by the Maharaja of Kapurthala were still going on, it appears that Dewan Jarmani Dass, then Chief Minister of Kapurthala State, prevailed upon the Maharaja to quietly sell the property jointly to him and the original plaintiff, late R.M. Seksaria. Although, the Division Bench of the High Court has made scathing remarks that Dewan Jarmani Dass had acted clandestinely and *malafide* in order to grab the property even before the decision of the Government on the nature of the property, it is unnecessary for us to pronounce on these facets of the matter for the decision on legal issues does not turn upon these findings. B C

The Government of India was not aware of the sale and conveyance of the suit property to Dewan Jarmani Dass and the plaintiff, till or about 6.3.1950. It is only thereafter that a discussion took place on 7.3.1950 between the representatives of the Government of India headed by V.P. Menon, Secretary, Ministry of States and the Maharaja of Kapurthala. The minutes which were recorded on 11.3.1950, with reference to the suit property, state: D

> "The sale of Kapurthala House in Delhi should be revoked. The vendee should be asked to refund the consideration money to His Highness. This decision was communicated to Dewan Jarmani Dass by Secretary." E

On 14.3.1950, Paramjit Singh, who had by then become the Maharaja of Kapurthala State, wrote to V.P. Menon, Secretary, Ministry of States in which he referred to the previous talk on the issue and said: F

> "Since my talk I find that present owner of the House i.e. M/s Jarmani Dass and Seksaria Brothers are not prepared to voluntarily rescind or cancel the sale deed of Kapurthala House in their favour."

He further stated: G

> "That my secretary, Shanti Sagar Mahendra, had been authorised to pay the amount of Rs. 1.50 lacs to M/s Jarmani Dass and Seksaria Brothers and get back the Kapurthala House at New Delhi if they so agree and have the sale deed registered in his own name. In case H

A this is not possible I request you to *please be good enough as to see that Kapurthala House, New Delhi, is declared my personal and private property and I am not made to return the money."*

(emphasis ours)

B This does not at all sound like any assertion of title to the suit property, but more like an imploration to the Government of India to declare the property as private property so that Maharaja was not required to refund the money which he had taken from M/s Dewan Jarmani Dass and Seksaria Brothers.

C The determination of the issue as to whether the suit property was the private property of the Ruler of Kapurthala State recognised as such by the Government of India or whether it was the State property of Kapurthala State, which merged into the PEPSU and thereafter transferred by the Government of India to the State of Punjab (Defendant No. 2), is crucial and decides the fate of the present litigation. It is crucial because the plaintiff claims title D from the Maharaja of Kapurthala; if the Maharaja's title to the suit property was good, then the plaintiff has good title; conversely, if the Maharaja had no title to the suit property as on the date of the conveyance dated 10.1.1950, then the plaintiff gets no title and, therefore, his suit must fail. *Nemo dat quoad non habet.*

E *The Commands of 1940 and 1948:*

The plaintiff attempted to prove his title by showing that the Maharaja had a good title because the suit property was the private property of the Maharaja bought from his personal funds and not the State property of F Kapurthala purchased from State funds. Despite the allocation made by the *aide memoire* on 1.3.1937 prepared by Col. Fisher, the plaintiff's case is that by reason of the subsequent command of the Maharaja dated 1.1.1940 the classification made by the *aide memoire* was overridden and the property remained as personal property of the Maharaja. Consequently, under the covenant it was bound to be recognised as personal property which was G guaranteed under the covenant. Since the suit property was the personal property of the Maharaja, the Maharaja had good title which had passed to the plaintiff, is the line of argument of the plaintiff. A number of legal arguments in support and voluminous documents have been placed on record. The Division Bench of the High Court meticulously considered everyone of H the documents on record and totally disbelieved the case of the plaintiff as

to the existence of this alleged command of the Maharaja dated 1.1.1940 and another alleged command dated 11.8.1948 declaring the suit property as his private property. There is serious controversy as to whether the said documents were ever issued, whether the said documents were proved on record, and if so, what the legal consequences would be. We may add here that, apart from these two disputed documents, the only other document in which there is any reference to the command of 1940 (without indicating the specific date) is a letter dated 11.4.1950 written by Dewan Jarmani Dass to V.P. Menon which appears to have been written: "in order to clear my position and to clear some misunderstanding" as to the sale of the said property to Dewan Jarmani Dass. In this letter, it is stated that Maharaja of Kapurthala in 1940 passed an order in unequivocal terms that 'Kapurthala House' should be considered as his personal property. Hence, Dewan Jarmani Dass said this should be treated as personal property of the Maharaja and, consequently, his own rights should remain protected.

Having carefully perused the documents placed on record, and considered the arguments of the learned counsel, we are inclined to agree with the findings of the Division Bench about both these documents. As to the command of 1940, it has been held proved by the learned Single Judge only on the basis of adverse inference and secondary evidence. The Division Bench has correctly pointed out the circumstances under which secondary evidence could have been let in did not exist at all. The inconsistency in the pleadings as to the particulars of the documents led to the resulting confusion in the defendants admitting possession and denying possession in succession. One thing, however, strikes us that in the entire correspondence, which the Maharaja contemporaneously had up to the sale of the suit property, there was no reference to this command at all. While it may not be possible to agree with the positive conclusion drawn by the Division Bench that this command was fabricated and clandestinely inserted by the plaintiff in the records of the Archives Department, we too agree that these documents have not been proved in accordance with law.

The Division Bench of the High Court rightly points out that the *aide memoire* prepared by Lt. Col. Fisher on 1.3.1937 indubitably declared that House in Delhi was a "State House". This document was signed by Col. Fisher in his capacity as Prime Minister as also by the Ruler of Kapurthala. There is no dispute about this document, or that it had been signed by the Ruler of Kapurthala. In other words, as early as 1.3.1937, the Maharaja of

A Kapurthala accepted that the House in Delhi (the suit property) was State property. It would appear that in order to help the plaintiff in his suit, the third defendant, who is the grand son and successor of the Maharaja, and the plaintiff, introduced the theory that the Maharaja by his Commands dated 1.2.1940 and 11.8.1948 had nullified the effect of Lt. Col. Fisher's *aide memoire* dated 1.3.1937.

B

The fact that there was no reference whatsoever to these documents in any of the contemporaneous correspondence between the Ruler of Kapurthala and the Government of India lends credence to the dubitable nature of these two documents. In fact, at no point of time did the Maharaja put forward C a claim with the Government of India that the suit property had ceased to be State property and become his private property by reason of his aforesaid commands or otherwise. As we have already noticed, the tone and tenor of the correspondence between the Maharaja and the Government of India during the material period was abjectly supplicant and demonstrated only an D anxiety on his part to protect his privy purse and to bargain for certain concessions from the Government. Never was there an assertion of rightful title to the suit property, his efforts being directed towards wresting greater concessions. The Division Bench has rightly analysed the evidence on record and came to the finding that till 1934, the income from Oudh estates and Kapurthala State were treated as one consolidated account. It was only on E the advice of the Lt. Col. Fisher that the accounts were separately maintained after 1936. Even in the Note dated 28.5.1948 (Vol. 9 page 17) sent by the Maharaja and the Tika Raja, President of State Council to V.P. Menon, Secretary, Ministry of States, it is pointed out that the income from Oudh estates were merged in the income of Kapurthala State upto 1934, and it was F bifurcated only on the recommendation of Lt. Col. Fisher. The reason for this is explained thus:

> "This step was taken only with the idea of earmarking the income of the Oudh estates for my Civil List. As it has been my desire for some time to amalgamate once again the income of my Oudh estates G with the revenue of my State, I am pleased to order that steps should be taken with regard to the amalgamation of the Oudh estates with the Kapurthala State."

Thereafter, the Maharaja pleads his case that he should be granted Rs. 25 lacs H to be transferred to his household account out of the State Reserve Fund.

On 4.6.1948, the Ministry of States wrote to the Maharaja that transferring such a large amount would invite serious public criticism and would not be acceptable to the Government. Discussions followed thereafter. The Maharaja took the advice of Chaudhary Niamat Ullah, a retired Judge of the Allahabad High Court, and addressed a note dated 24.8.1948 to the Chief Minister of Kapurthala. Even in the memorandum the plea made was with regard to injustice that was likely to result: "if my privy purse is determined solely on the basis of the revenue of the Kapurthala State Property". The *aide memoire* prepared by the Maharaja in July, 1948 (Ex. D2/5) also reiterates this.

In view of this clear evidence, the Division Bench was justified in its finding that the Maharaja of Kapurthala had clearly admitted that the income from Oudh estates formed an integral part of State of Kapurthala and all along maintained in his correspondence with the Government of India that the nature of the suit property could not be decided merely from the source of income aspect.

Article 363 of the Constitution of India / Act of State:

For the appellants, it was contended that the source of income was not really the index of the nature of the property, namely, whether it was State property or private property of the Maharaja, but that the principle adopted at the time of accession was the principle of user of the property.

The learned counsel for the appellants urged that the evidence on record shows that the suit property in Delhi had been personally used by the Maharaja all along and at no point of time was it used for State purposes. Hence, he contended that this property was the private property of the Maharaja.

Even assuming that the learned counsel for the appellants may be right in his contention that applying the test of user the suit property was liable to be determined to be the private property of the Maharaja, the question that arises is: Did the Government of India recognise the suit property as the private property of the Maharaja? If they did not, could a suit be maintained for a declaration that the suit property was the private property of the Maharaja? Answering this question, the Division Bench holds that the suit was not maintainable and barred by reason of Article 363 of the Constitution of India.

A The learned counsel for the State of Punjab and the Union of India contended that the suit of the plaintiff was clearly barred and the court had no jurisdiction to entertain the suit by reason of Article 363 of the Constitution of India. Article 363 reads thus:

B *"363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.* — (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered C into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing D under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article-

E

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised F before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

Counsel for the State of Punjab contended that the act of accession of Kapurthala State to the Dominion of India, which was brought about by an G instrument of accession dated 16.8.1947 resulting in the Union of PEPSU coming into being on 15.7.1948 as well as the execution of the covenant dated 5.5.1948 between the Maharaja and the Government of India, were acts of the State. They were the resultants of exercising political power which could not be questioned in the municipal courts. Learned counsel placed H heavy reliance on the judgment of the Constitution Bench of Seven learned

Judges of this Court in *State of Gujarat* v. *Vora Fiddali Badruddin Mithibarwala*[3]. A

In *Vora Fiddali* (supra) a Constitution Bench of this Court had examined whether the Government of India was bound to recognise and implement the rights created by a "Tharao" of the Ruler of the erstwhile Sant State granting special rights with regard to certain forests after the Maharaja of Sant State had by an instrument of merger agreement dated 19.3.1948 acceded to the Dominion of India, the Government of India, having refused to recognise any rights flowing under the grants made under the 'Tharao' of the erstwhile Ruler. The Constitution Bench approved of the following dicta of Lord Dunedin in *Vaje Singhji Jorwar Singh* v. *Secretary of State for India*[4]: B C

> "When a territory is acquired by a sovereign state for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants could enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties." D E

It also expressly disagreed with the ratio of an earlier judgment of this Court in *Virendra Singh & Ors.* v. *The State of Uttar Pradesh*[5] that such grants were merely voidable and continue to bind the parties till they were expressly revoked by the new Sovereign. The majority judgment in *Vora Fiddali* (supra) rendered by Hidayatullah, J. succinctly sets forth the concept of 'Act of State' in the following words: F G

"To begin with, this Court has interpreted the integration of Indian

3. [1964] 6 SCR 461.

4. (1924) LR I.A. 357.

5. [1955] 1 SCR 415. H

States with the Dominion of India as an Act of State and has applied the law relating to an Act of State as laid down by the Privy Council in a long series of cases beginning with *Secretary of State in Council for India* v. *Kamachee Boye Saheba*[6] and ending with *Secretary of State* v. *Sardar Rustam Khan and Other*[7]. The cases on this point need not be cited. Reference may be made to *M/s Dalmia Dadri Cement Co. Ltd.* v. *Commissioner of Income-tax*[8], *The State of Saurashtra* v. *Menon Haji Ismali Haji*[9], *Jaganath Agarwala* v. *State of Orissa*[10], and *State of Saurashtra* v. *Jamadar Mohamed Abdulla and Others*[11] . In these cases of this Court, it has been laid down that the essence of an Act of State is an arbitrary exercise of sovereign power on principles which are paramount to the Municipal Law, against an alien and the exercise of the power is neither intended nor purports to be legally founded. A defence that the injury is by an Act of State does not seek justification for the Act by reference to any law, but questions the jurisdiction of the court to decide upon the legality or justice of the action. The Act of State comes to an end only when the new sovereign recognises either expressly or impliedly the rights of the aliens. It does not come to an end by any action of subordinate officers who have no authority to bind the new sovereign. Till recognition, either express or implied, is granted by the new sovereign, the Act of State continues."

The decision also holds that merely because the issue of recognition of the new rights was pending with the Government, it cannot be postulated that the act of State had come to an end. The act of State could only come to an end if the Government recognises the rights which were granted by the erstwhile Ruler. The Government may take time to consider; and delay does not mitigate against the act of State. [See, *Jaganath Agarwala* v. *State of Orissa* (supra)].

Vora Fiddali (supra) also holds that although the distinction between

6. (1859) 12 Moore P.C. 22.
7. (1941) 68 I.A. 109.
8. [1959] SCR 729.
9. [1960] 1 SCR 537.
10. [1962] 1 SCR 205.
11. [1962] 3 SCR 970.

legislative, executive and judicial acts of an absolute Ruler (such as the Indian Rulers were) was apt to disappear when the source of authority was the sovereign, this would be true only in so far as the subjects of the Ruler were concerned, since they were bound to obey not only laws but any orders of the Ruler, whether executive or judicial. "For them there did not exist any difference because each emanation of the will of the sovereign required equal obedience from them. But it does not mean that the Ruler acted legislatively all the time and never judicially or executively. If this was the meaning of the observations of this Court then in *Phalke's*[12] case, it would not have been necessary to insist that in determining whether there was a law which bound the succeeding sovereign, the character, content and purpose of the declared will must be independently considered." Applying the test, the majority came to the conclusion that the "Tharao" was not "law in force" which continued to operate by reason of Article 372 of the Constitution of India. It was also held that the municipal courts in India could not pronounce upon the dispute arising under the agreement or touching the agreement as the subject was outside the jurisdiction by reason of Article 363 of the Constitution of India.

The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises has been accepted by this Court. [See in this connection: *M/s Dalmia Dadri Cement Co. Ltd.* v. *The Commissioner of Income-tax* (supra); *Jagannath Agarwala* v. *State of Orissa* (supra); *Promod Chandra Deb and Others* v. *The State of Orissa and Others*[13] and *The State of Saurashtra* v. *Jamadar Mohamad Abdulla and Others* (supra).]

Applying the law as laid down in *Vora Fiddali* (supra) it appears to us that the contention of the State of Punjab and the Union of India must be upheld. The Maharaja of Kapurthala was an independent sovereign Ruler. To merge or not to merge with the Dominion of India was a political decision taken by him and the instrument of accession dated 16.8.1947 was, without doubt, an act of State. So was the covenant dated 5.5.1948. By the covenant all rights, authority and jurisdiction of the erstwhile Rulers were vested in the Patiala and East Punjab States Union and all assets and liabilities of the

12. [1961] 1 SCR 957 at page 964.

13. (1962) Suppl. 1 SCR 405.

A covenanting States became the assets and liabilities of the Union, PEPSU. It is only Article XII which ensured certain rights to the Ruler with regard to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of the State to the Raj Pramukh. Consequently, he was also
B required to furnish to the Raj Pramukh, before the deadline, an inventory of all the immovable properties, securities and cash balances held by him as such private property. This was obviously done so that the Government of India could ascertain the correctness of the claim. No doubt, clause (3) of Article XII provides that a dispute arising as to whether any item of property was the private property of the Ruler or State property was referable to a nominee
C of the Government of India and such nominee's decision would be final and binding on all the parties concerned, provided that such dispute was to be referred by the deadline of 31.12.1948. Interpreting this clause, the learned Single Judge took the view that under the treaty the Government of India could not unilaterally refuse to recognise any property as private property of
D the Ruler, and, if it did, it was obliged to refer it to the person contemplated by clause (3). Failure to do so would imply recognition of the claim as to private property. In our view, this reasoning of the learned Single Judge was erroneous on two counts. In the first place, this interpretation ignores the true nature of the covenant. The covenant is a political document resulting from an act of State. Once the Government of India decides to take over
E all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property. On the other hand, this clause of the covenant merely means that, if the Ruler of the covenanting State claimed property to be his private property and the Government of India did not agree, it was open to
F the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out
G of the terms of the covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution of India.

Although, *Vora Fiddali* (supra) was a case which dealt with the recognition of the rights of the subjects of an erstwhile Ruler after accession
H of the Ruler to the Dominion of India, the principles laid down in *Vora*

Fiddali would apply with greater vigour to the rights claimed by the Ruler himself. A

We are of the view that after the Government of India took over all the properties of the Ruler of the Kapurthala State, by an act of State, assuring him by the covenant only that he would be entitled to the full ownership, use and enjoyment of all private properties. A procedure was prescribed for recognition of such private properties. The evidence on record does not suggest that at any point of time the Ruler of Kapurthala had disputed the power of the Government of India to decide the issue as to whether the suit property was the property of the State of Kapurthala or private property of the Ruler. On the contrary, the correspondence placed on record suggests that at all points of time the Ruler of Kapurthala accepted the position that the Government of India had the right to decide the nature of the property and was merely pleading that the suit property be declared as his private property. Finally, in any event, we are of the view that the issue as to whether the Government of India was obliged to recognise the private property of the Ruler of Kapurthala, and whether, under the terms of the covenant (Article XII of the covenant), the Ruler of Kapurthala was entitled to have it thus recognised, are disputes which are clearly barred by Article 363 and the court had no jurisdiction to decide the said issues. B C D

Lex Situs: E

The appellants contend that the decision that the suit property could not be recognised as private property was taken only in 1951 i.e. after the coming into force of the Constitution of India. By that time, the Maharaja had acceded to the Union (PEPSU) which was succeeded by the State of Punjab as a State under the Constitution. Appellants contend that by the decision taken in 1951 the right to property which was held by a citizen of the country could not have been taken away by a mere executive act without the backing of a valid legislative enactment. According to the appellants, the *lex situs* would govern the issue. In other words, the law as applicable in Delhi would have governed the issue whether the Ruler of Kapurthala had a right to the property under the laws as applicable in Delhi. The Ruler of Kapurthala had purchased the property by a registered sale deed from Khan Bahadur Abdul Hamid; thus, he was the true owner of the property and his ownership rights could not have been extinguished except by a law validly made under the Indian Constitution. Allied to this argument is also a subsidiary argument that there cannot be an act of State as against a citizen or a friendly alien. F G H

A Reliance was sought to be placed on the judgment of the House of Lords in *Johnstone* v. *Pedlar*[14] and of this Court in *The State of Saurashtra* v. *Memom Haji Ismail Haji*[15] and *H.H. Maharajadhiraja Madhav Rao Scindia etc.* v. *Union of India and Another* [16].

B Some recapitulation of contemporaneous facts is in order to appreciate the merits of this argument.

After the instrument of accession was executed by the Maharaja on 16.8.1947, he executed the covenant on 5.5.1948, and he forwarded the list of his private property by way of an *aide memoire* and handed it over on C 15.7.1948 to the Raj Pramukh. Logically, this would have been the first occasion for the Maharaja of Kapurthala to lay claim to the suit property as his private property. Interestingly, there is no reference made to the suit property or any other property as private property in this *aide memoire*. The only anxiety appears to be to get the privy purse fixed which was a big amount to be paid regularly by the Government of India.

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On 16.7.1948 (Ex. D.2/6) the Maharaja addressed a letter to the Raj Pramukh in which he refers to the copy of the *aide memoire* already handed over. Even in this letter, nothing is said about the nature of the property in Delhi. The emphasise is purely on ensuring that a large amount of privy purse E fixed.

On 25.8.1948 (Ex.D.2/7), one more letter was addressed by the Maharaja of Kapurthala to the Raj Pramukh. In this letter, there was a detailed list of "private properties situated in and outside the Kapurthala State in accordance with Article XII(2) of the covenant. There is also reference F to the *aide memoire* personally handed over at Patiala on 15.7.1948. The list refers to several palaces and buildings within Kapurthala State, and in Mussoorie. For the first time, there is reference to the suit property as 'Kapurthala House' situated at 3, Mansingh Road. The issue of recognition of private property was still very much under process for the Raj Pramukh G wrote back to the Maharaja of Kapurthala on 3.9.1948 (Ex. D.2./8) requesting him to furnish a list of jewellery, silver ware etc. as per inventory in the stock

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14. [1921] All E.R. 176.

15. [1960] 1 SCR 537 at page 544.

H 16. [1971] 1 SCC 85.

registers of the Toshekhana at Kapurthala as it would "help greatly in the settlement of claims of your private property." A

On 22.9.1948 (Ex.D.2/9) there is a letter written by the Maharaja to the Raj Pramukh with regard to certain animals and articles which he wanted to be recognised as private property. B

On 12.1.1949 (LC/D Vol.6 page 1539) there is a reference made to "other properties outside the Kapurthala State belonging to me personally" with a promise that their list would be forwarded for consideration.

At that time, a number of Rulers had acceded to the Government of India and the White Paper says that their cases were to be considered one by one individually. Consequently, there was bound to be some time lag in taking a decision on the claim to private properties made by the Rulers. C

While the claim was being processed, on 1.2.1949 (Ex. D2W1/3), the Finance Secretary, Govt. of PEPSU wrote to N.M. Buch, Joint Secretary, Government of India to point out that the order passed in 1937 by the Maharaja clearly bifurcated the division of the properties into the house hold and State and that this was contrary to the claim he was putting forward. He also invited attention to the fact that while Mussoorie property was being divided half and half, the Delhi house necessarily was to be the official property of the State and that, though the question had been settled, the Maharaja had raised the issue again. D E

By letter dated 11.4.1949 (Ex.D.2./10) the Raj Pramukh informed the Maharaja: F

> "The question about Kapurthala House in New Delhi will be settled separately on the same basis as is applied in the case of houses owned by other Covenanting States, and I shall be writing to Your Highness further about it."

During this process the Maharaja of Kapurthala sold the suit property jointly to the plaintiff and Dewan Jarmani Dass on 10.1.1950. G

There was a meeting convened on 25.1.1950 between the Raj Pramukh, the Maharaja of Kapurthala, M.R. Bhide and the Private Secretary to the Raj Pramukh. Even the minutes (Ex. D.2/11) recorded of this meeting do not H

A disclose that the Maharaja had informed M.R. Bhide about the sale of the property on that day.

When the Government of India came to know of the sale of the suit property, a meeting was arranged on 7.2.1950 in Kapurthala between V.P. Menon, Secretary, Ministry of States, M.R. Bhide, Regional Commissioner, B PEPSU, Sardar Hari Sharma, Deputy Secretary of States and the Maharaja of Kapurthala. The minutes of this meeting, insofar as they pertain to the suit property, make interesting reading. They read as under (Para 3):

> "The sale of Kapurthala House in Delhi should be revoked. The C vendee should be asked to refund the consideration money to His Highness. This decision was communicated to Dewan Jarmanidass by Secretary."

On 14.3.1950 (Ex.PX-13), the Maharaja wrote to V.P. Menon, Secretary, Ministry of States requesting him to declare the suit property as his personal D property.

On 26.2.1951 a meeting was held between the representatives of the Government of India and the Maharaja. The minutes were recorded on 1.3.1951 (Ex. D.2W2/2). The material portion of the minutes reads as under:

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> "Delhi House : His Highness was informed that in the basis of the information received on him, the house could not be treated as private property. The intention of the Government of India, therefore, was to treat the house as State Property."

F Finally, by letter dated 4/5.5.1951 (Ex.P.6/3), the Government of India informed the Maharaja:

> "It has now been decided that Kapurthala House, No. 3, Man Singh Road, New Delhi, will be State property and not the private property of Your Highness. We have informed the PEPSU Government of G this decision."

In the light of these developments, it is clear that the act of State continued from the date when the instrument of accession was signed i.e. 16.8.1947 to the date on which the final decision of the Government of India H was conveyed to the Maharaja. The fact that time was taken in conveying

the decision, or the fact that the Constitution of India had come into force in the interregnum, do not change the character of the act of the Government of India in refusing to recognise the suit property as the private property of the Maharaja of Kapurthala. *Agarwala* (supra) holds that an act of State need not be a prompt decision, but could stretch over a period of time. *Vora Fiddali* (supra) states that the act of State would continue till the new sovereign recognises the rights. In this case, however, the act of State terminated with the final decision of non-recognition being conveyed. What the Government of India did in the year 1951 was not referable to anything flowing from the Constitution, but, action albeit delayed, referable to the instrument of accession and the covenant signed by the Maharaja. Any dispute with regard to what the covenant guarantees, or whether the act of the Government of India was justified under the covenant is, beyond the pale of jurisdiction of the court by reason of Article 363 of the Constitution of India. The Division Bench of the High Court was, therefore, justified in making a finding that the suit was barred by Article 363 and was liable to fail.

Now, we may dispose of the subsidiary argument of Mr. Vellapally, learned senior advocate, based on the Doctrine of *Lex Situs*. *Vora Fiddali* (supra) is an authority for the proposition that the act of State would continue till there is recognition (or non-recognition). In our view, all the rights available to the erstwhile Ruler and his subjects are of no avail till there is recognition of such rights. The argument of *lex situs* could have perhaps prevailed, if the Government of India at any point of time had recognised the suit property as the private property of Maharaja of Kapurthala, and, after the coming into force of the Constitution, attempted to take it away otherwise then by a Constitutionally valid legislative enactment. On the facts, however, we find that no such recognition was granted. Merely because the decision not to recognise was conveyed to the plaintiff in the year 1951, the act of the Union of India did not cease to be an act of State, nor does it fall outside the protective umbrella of Article 363 of the Constitution of India. The contention of the learned counsel of the appellants that the plaintiff claimed title to the property through the registered sale deed in his favour under the law applicable in Delhi would be of no avail. As we have said earlier, if the Maharaja had no title to the property, the plaintiff can hardly get anything more.

Another interesting sideline in the argument was introduced by the learned counsel for the appellants that an act of State could never occur with

A reference to property that was not in the ceded territory. It is not necessary for us to examine this argument as the facts on hand are clearly against the argument. There is not doubt, whatsoever, that the Maharaja of Kapurthala held properties outside the territory of Kapurthala, say, for example, in Mussoorie and Delhi. Even with regard to these properties, the Government
B took a decision as to their character and whether they could be recognised as private property of the Ruler. As to Delhi property, the Government of India decided that it would be treated as State property and in the case of Mussoorie property, half of it to be treated as State property and half of it to be treated as private property of the Maharaja of Kapurthala. Further, we find that Article VI of the Covenant dated 5.5.1948 vests "all" the assets and
C liabilities of the covenanting States in the Union of PEPSU and makes exception only with regard to private properties as contemplated by Article XII. There is no reference whatsoever therein to the *situs* of the property. The covenant, therefore, drew a distinction only between State property and private property of the Ruler irrespective of where the property was situated.
D In our view, any further dispute with regard to the interpretation of this clause of the covenant would again be beyond the jurisdiction of the court by reason of Article 363 of the Constitution of India.

In the result, we uphold the findings of the Division Bench of the High Court that the suit was not maintainable.

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Article 77 of the Constitution of India:

The contention based on Article 77 of the Constitution of India, urged by the learned counsel for the appellants, also does not have merit. The contention is that all orders and other instruments made and executed in the
F name of the President are required to be authenticated in the manner as specified in Article 77. That the order, if any, of the Government of India, not to recognise the suit property as the private property of the Maharaja, was not executed in this manner and, therefore, is invalid. The judgment of this Court in *State of Rajasthan and Anr.* v. *Sripal Jain*[17] and *L.G. Chaudhari*
G v. *The Secretary, L.S.G. Dept., Govt. of Bihar and Ors.*[18] were pressed into service in support.

In our view, the argument based on Article 77 is irrelevant. Even

17. AIR (1963) SC 1323.

H 18. AIR (1980) SC 383.

assuming that the appellants are right in the contention that the decision not to recognise the suit property as private property of the Maharaja of Kapurthala, was required to be and not taken in the manner contemplated by Article 77, it would only mean that there was no decision. In our judgment, the plaintiff cannot succeed by merely showing that the Government of India had failed to arrive at a decision on the issue. He must further show that the Government of India had recognised the suit property as private property of the Ruler of Kapurthala as that could be the only foundation for his title. There is also another reason why we are not impressed with this argument. If the act of recognition or non-recognition of the suit property as private property is relatable to the instrument of accession made in 1947 and the covenant executed in 1948, the decision would also relate back to the date of the covenant, and on that date Article 77 of the Constitution was not in existence. Hence, it would be incorrect to judge the validity of that decision relatable to the covenant executed in 1948 by the Constitution of India, which came into existence much later.

Article 372 of the Constitution of India:

The appellants, relying on the judgment in *Vishnu Pratap Singh* v. *State of Madhya Pradesh & Ors.*[19], contend that the Ruler of Kapurthala was an absolute sovereign, who could by his command change the character of the property from State property to private property, which he did by his commands of 1940 and 1948; that these commands had the force of law and continued to operate as 'existing law' by reason of Article 372 of the Constitution of India; and they could only be revoked by a law validly made by Parliament and not by an executive act.

The argument, undoubtedly, allures at first blush; but, it fails when scrutinized. In the first place, *Vishnu Pratap Singh* (supra) relied on and is based on the ratio of *Virendra Singh* (supra). *Vora Fiddali,* a decision of Seven learned Judges, expressly overruled the principle laid down in *Virendra Singh* (supra). Consequently, *Vishnu Pratap Singh* (supra) cannot be said to be good law. In any event, the test laid down in *Vora Fiddali,* if applied to the commands in question (even assuming they have been proved), is answered negatively. The learned Single Judge was correct in saying that 1948 command did not amount to law. Even assuming the two

19. [1990] 1 SCR 43.

A commands of 1940 and 1948 were proved, they would not amount to law, by applying the test laid down in *Vora Fiddali* (supra).

Learned counsel for the appellants placed strong reliance on the judgment in *State of Punjab & Ors.* v. *Brigadier Sukhjit Singh*[20] which, incidentally, is the case of the third defendant himself pertaining to Kapurthala B State. Strong reliance is placed on the observations in Paragraph 11 of the judgment:

> "Now it is beyond doubt that the ruler of an Indian State was in the position of a sovereign and his command was the law. His Farman C had the strength and potency of a law made by an elected legislature and his acts, administrative or executive, were sovereign in character."

This judgment would be binding inter parties as far as what it decides. If it is cited as a precedent on a proposition of law, we are afraid that this judgment runs counter to what had been laid down by the majority judgment in *Vora* D *Fiddali* (supra) and, what is more, strangely, does not refer to *Vora Fiddali*. In the teeth of *Vora Fiddali*, we are unable to accept the cited judgment as reflecting the correct position of law.

Limitation:

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That brings us to the issue of limitation. The learned Single Judge held that the plea of limitation not having been taken in the pleadings defendants Nos. 1 and 2 should not be allowed to raise the said plea.

We may notice here that under the Code of Civil Procedure, Order VII F Rule 1(e) requires a plaint to state "the facts constituting the cause of action and when it arose". The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found that G on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue. However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as

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private property of the Maharaja was taken some time in the year 1951, whether in March or May. Dewan Jarmanidass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11.5.1960.

The Division Bench was, therefore, right in applying Article 120 of the Limitation Act, 1908 under which the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when the right to sue accrues. The suit was, therefore, clearly barred by limitation and by virtue of Section 3 of the Limitation Act, 1908, the court was mandated to dismiss it.

As rightly pointed out by the Division Bench, the learned Single Judge ought to have permitted the plea to be raised on the basis of the facts which came to light. The Division Bench has correctly appreciated the plea of limitation, in the facts and circumstances of the case, and rightly came to the conclusion that the suit of the plaintiff was liable to be dismissed on the ground of limitation. We agree with the conclusion of the Division Bench on this issue.

Alternative Relief:

The last issue which needs consideration relates to the alternative relief prayed for by the plaintiff in Paragraph 16 of the plaint. The plaintiff pleaded that in case the court came to the conclusion that the Maharaja Paramjit Singh had no authority to sell the immovable property to the plaintiff and Dewan Jarmani Dass and/or that the plaintiff and the said Dewan Jarmani Dass did not acquire any title to the suit property by virtue of the Indenture of Conveyance dated 10.1.1950, then the plaintiff was entitled to a sum of Rs. 4 lacs as damages from the third defendant (Sukhjit Singh, the then Maharaja of Kapurthala), for "breach of the covenant of title contained in the said indenture of conveyance" as a result of which the plaintiff would be deprived of the whole of the suit property by reason of the said defect found in the title of the Maharaja Paramjit Singh. It was pleaded that the third defendant was the sole heir of late Maharaja Paramjit Singh and had inherited all his properties and was, thus, bound and liable to keep the plaintiff harmless and indemnified against "all losses, damages costs and expenses which the plaintiff might sustain or incur by reason of the plaintiff being deprived of the suit property." The plaintiff alleged that he had sustained damages in the sum of Rs. 4 lacs "as per particulars hereto annexed

A and marked as *Ex. J.*" and claimed the said amount from defendant No. 3. Interestingly, there is no annexure- 'Ex.J.' to the original plaint on record. The third defendant by his written statement while traversing the allegations on this issue maintained that he was not liable to keep the plaintiff indemnified against such losses. He also denied that the plaintiff had lost
B a sum of Rs. 4 lacs as alleged in his annexure- Ex.J., the particulars of which he also denied having been supplied to him. A replication to the written statement of Defendant No. 3 was made by the plaintiff in which it is repeated that the third defendant was bound and liable to keep the plaintiff indemnified against any loss, damage, costs etc. suffered as a result of deprivation of the suit property. The plaintiff reiterated that the
C third defendant was liable for the claim in the suit and that "the particulars of the claim of 4 lakhs are on the court file as Annexure 'J' and the Defendant No. 3 ought to have inspected the court file". After anxiously wading through the mass of documents filed in the trial court, we are unable to locate any such annexure - 'J' in the plaint. It is not known
D as to how the plaintiff arrived at the estimate of the alleged damages claimed by him from third defendant as an alternative relief (vide prayer clause (e) in the plaint).

Not only there is no pleading on the issue, but we find that there is no evidence, whatsoever, let in by the plaintiff on this alternative
E relief claimed. All the witnesses examined by the plaintiff were with reference to the title of the plaintiff. Not a single of the plaintiff's witnesses has said a word about this alternative claim for damages in the sum of Rs. 4 lacs. Apart therefrom, when the third defendant was examined, not a single question seems to have been addressed to him in cross examination
F with regard to this alternative claim of damages in the sum of Rs. 4 lacs.

Issues 9, 10 and 13 framed by the learned Single Judge pertained to this claim. The learned Single Judge disposed of this claim by observing:

> "It has been stated by defendant No. 3, in his evidence, that he is
G the only legal heir of his father Maharaja Paramjit Singh and he had succeeded to the estate left behind by him. But in view of the fact that I have held that the father of defendant No. 3 was the owner of the property in dispute and had the authority to sell the same, therefore the question of defendant No. 3 becoming liable to re-compensate the plaintiff with any amount does not arise. The issues
H are decided accordingly."

The Division Bench dealt with this issue and observed (vide Paragraph 595): A

> "The learned Single Judge took the view that third defendant was not liable to recompensate the plaintiff. It was not brought to the notice of the learned Judge that the plaintiff did not press his claim against defendant No. 3 at the time of the trial." B

Although, in the written submissions filed before the High Court as well as in the appeal before this Court, submissions have been made with regard to the alternative relief, no arguments were addressed before us on this issue when the oral submissions were made by the counsel on both sides. Despite looking for it, we are unable to locate anything on record which expressly C suggests that this claim had been expressly given up by the plaintiff during the trial. We are unable to find out the basis on which the Division Bench arrived at this conclusion. This fact, however, does not carry the case of the plaintiff any further. The burden of establishing that the plaintiff had sustained damages and the measure of damages was squarely on the plaintiff. The plaintiff has D singularly failed to discharge this onus both by lack of pleadings and lack of evidence. In the circumstances, this alternative relief claimed by the plaintiff must fail.

In the result, we find no reason to interfere with the impugned judgment E of the Division Bench of the High Court. The appeal is liable to be and is dismissed.

In the facts and circumstances of the case, however, there shall be no order as to costs. F

Civil Appeal No. 3861 of 2001:

The facts, insofar as they are relevant for disposal of this appeal are as under:

On 10.1.1950, the late Maharaja Paramjit Singh, ex-Ruler of Kapurthala G State purported to sell and convey the suit property to Dewan Jarmani Dass and R.M. Seksaria by a registered sale deed for the consideration of Rs. 1.50 lacs.

We have already held, by our judgment delivered today in Civil Appeal H

A No. 3862 of 2001, that Maharaja Paramjit Singh had no title to the suit property which he could convey to the plaintiff. After purporting to sell the suit property to M/s Dewan Jarmani Dass and R.M. Seksaria, the petitioners put them in possession.

B On 29.3.1950, the Government of India, in exercise of its power under Section 3 of the Delhi Premises (Requisition and Acquisition) Act, 1947, issued a notice of requisition to R.M. Seksaria. This was objected to by R.M. Seksaria, but ultimately an order of acquisition of the suit property was passed on 17.6.1950.

C On 4.12.1950, pursuant to the said order of requisition the Estate Officer took possession of the suit property.

On 21.2.1951, a deed of transfer was signed between Dewan Jarmani Dass and R.M. Seksaria by which Dewan Jarmani Dass conveyed, transferred his undivided share, rights, title and interest in the property to R.M. Seksaria.
D There was correspondence between R.M. Seksaria and the Estate Officer with regard to disposal of the furniture, fittings drapery etc. in the suit property.

On 14.3.1952, the Delhi Premises (Requisition and Acquisition) Act, 1947 was repealed by the Requisitioning and Acquisitioning of Immovable
E Property Act, 1952. Section 24 of the new Act made a deeming provision under which the properties requisitioned under the repealed Act were deemed to have been requisitioned under the new Act.

On 11.5.1960, R.M. Seksaria (the plaintiff) filed a suit in the Delhi High Court for declaration of his title to the suit property.

F

The Government of India had taken a decision that the suit property had been refused to be recognised as the private property of the late Maharaja of Kapurthala. It took the stand that the suit property was State property and devolved upon PEPSU, and thereafter, on its successor, State of Punjab. In
G the meanwhile, the Government of India had allowed the State of Punjab to use the property.

By 10.3.1987 the requisitioning of the property came to an end. By this time, however, there was a suit for declaration of title of the property. The State of Punjab and the Government of India denied that R.M. Seksaria
H had derived any title to the suit property, and, therefore, refused to hand it

back to R.M. Seksaria, despite the requisitioning order having come to an end. A

On 18.5.1987, R.M. Seksaria filed a writ petition, CWP No. 1612/87 in the High Court of Delhi for a direction to the Union of India, the Director of Estate, Ministry of Urban Development and the State of Punjab to give vacant possession of the suit property to the petitioners. This writ petition B was heard along with the first appeal RFA (OS) No. 19 of 1989 filed by the State of Punjab and Union of India impugning the decree in favour of the plaintiff which had been made by the learned Single Judge. When the writ petition was taken up for hearing, the learned counsel appearing for the petitioners and the present civil appeal fairly submitted to the court that, if C the court accepted the case of the plaintiff, then the petitioners would be entitled to the reliefs prayed for in the writ petition. By its judgment dated 8.12.2000, the Division Bench of the High Court dismissed the writ petition by observing thus in Paragraph 4:

> "In the light of the findings rendered by us in RFA(OS) 19/89 the D plaintiff has no right at all in the suit property, the petitioners as legal representatives of the plaintiff in the suit, have absolutely no right to pray for the issuance of writ of mandamus and other reliefs."

This decision of the Division Bench can hardly be faulted. We see no E reason to interfere. In the result, this appeal is also dismissed.

No order as to costs.

K.G. Appeal dismissed.