M.P. GANGADHARAN AND ANR. A

v.

STATE OF KERALA AND ORS.

MAY 12, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.] B

Family Courts Act, 1984: Sections 3(1)(a), 7, 11, 20 and 21.

Family Court—Shifting of—From one place to another—Competent Authority to order the shifting—State Government established a Family Court at a certain place in the year 1999 in a tenanted premises—The litigant public, the Court staff and others concerned were facing difficulties in attending the said Court—The Bar Association of the District submitted a representation seeking the shifting of the Family Court from that place to another—The District Judge, in his report, pointed out various deficiencies and lack of infrastructure at that place—The High Court recommended to the State Government to accord sanction for shifting of the Family Court from that place to the District HQ—Government Order directing the shifting of the Family Court from that place to the District HQ issued—High Court dismissed the writ petition filed for quashing the said Government Order—Correctness of—Held: The power to shift a court from one place to another involves a jurisdictional question—The State Government exercised the said jurisdiction in consultation with the High Court—There is no reason why a Family Court established at a place having jurisdiction over an area including more than one town or village cannot be shifted from one place to another within that area—The present building is not suitable so as to meet the requirements of the litigants—Hence, Family Court rightly shifted from its existing place to another—General Clauses Act, 1897, S. 21—Constitution of India, 1950, Arts. 235 and 236. C D E F

Words & Phrases:

"Consultation"—Meaning of—In the context of S. 3 of the Family Courts Act, 1984. G

Doctrines:

"Doctrine of Proportionality"—Explained. H

A The State Government established a Family Court at a certain place in the year 1999 in a tenanted premises. The litigant public, the Court staff and others concerned were facing difficulties in attending the said Court. Therefore, the Bar Association of the District submitted a representation seeking the shifting of the Family Court from that place to another. The District Judge, in his report, pointed out various B deficiencies and lack a infrastructure at that place. The High Court adopted a resolution to recommend to the State Government to accord sanction for shifting of the Family Court from that place to the Civil Station at the District HQ. The State Government issued a Government Order directing the shifting of the Family Court from that place to the C District HQ.

Being aggrieved the appellant filed a writ petition for quashing the said Government Order for shifting the Court, which was dismissed. Hence the appeal.

D The following question arose before the Court:

Whether the State Government or the High Court would have authority to direct the shifting of a Family Court to another area once it is established in terms of Section 3(1j(a) of the Family E Courts Act, 1984?

Dismissing the appeal, the Court

HELD: 1. Section 3(1)(a) of the Family Courts Act, 1984 operate in two different fields. Whereas in the area which would attract Clause F (a), the State is bound to establish a Family Court; over areas which are not covered by Clause (a), the State has a discretion to establish or not to establish a Family Court. In the case of the former, the State may not have any power to shift the Family Court from the city or town whose population exceeds one million; but there is no reason why a Family Court established at a place having jurisdiction over an area G including more than one town or village cannot be shifted from one place to another within that area. [657-C, D]

2. In terms of Section 21 of the General Clauses Act, 1897 (corresponding to the relevant provisions in Interpretation and General H Clauses Act, 1925), the power to issue would include the power to

amend, vary or rescind, notifications and orders. If a notification could be issued establishing a Family Court at a certain place there is no reason why another notification cannot be issued by the State to shift the said Court to another place but within the same area of the Family Court. In terms of Section 21 of the General Clauses Act, the State Government will indisputably have jurisdiction to abolish a Family Court and establish one at another place. If such an extensive jurisdiction can be exercised by the State, one fails to comprehend as to why its jurisdiction should be held to be limited in the matter of shifting of Court from one place to another but within the same area, particularly, in view of the fact that in terms of Section 3(2) of the Act even a change in the area is permissible., [657-E, F, G]

3. It is no doubt true that a Family Court is created as a Federal Court under Federal Legislation, but the same, however, would not mean that the High Court will have no say at all in the matter of creation or shifting of the Family Courts. [657-G, H, 658-A]

4. Article 235 of the Constitution of India confers a supervisory jurisdiction upon the High Court over all the courts subordinate to it. Such jurisdiction can be exercised by the High Court in respect of judicial as also administrative matters. Article 236 of the Constitution of India provides for an interpretation clause. The expression "District Judge" would not only be an officer who has been specified in Article 236(a) but would also be such officer who would otherwise be within the control of the High Court in terms of Article 235 of the Constitution of India. [658-A-C]

5. The High Court exercises control over the subordinate courts not only in terms of the Constitution of India as envisaged under Articles 235 and 227 thereof but also under other Acts, viz. Code of Civil Procedure and Code of Criminal Procedure. The officers appointed as the Judges of the Family Courts are selected by the High Courts from amongst the existing cadre of the District Judges. The ACRs of the said Judges are recorded by the High Court. It remains undisputed that there is a Committee of Judges In-change of the Administration of the Family Courts. It may be true that the Act is a Federal Legislation but such Federal Legislation has been enacted by the Parliament for other purposes also as, for example, the Motor Vehicles Act, 1988 in terms whereof Motor Accident Claims Tribunals are constituted. [658-C-E]

A **6.1. The Family Courts should not be equated with the courts constituted under the Consumer Protection Act. The Family Courts being courts within the meaning of Article 235 of the Constitution of India as also the 1957 Act would be under the supervisory jurisdiction of the High Court and they cannot be treated to be a class by themselves** B **although their working and functions to some extent are circumscribed by the provisions of the Act and the Rules thereunder. [661-D, E]**

The State of Bombay **v.** *Narottamdas Jethabhai,* **AIR (1951) SC 69 and** *Jamshed N. Guzdar* **v.** *State of Maharashtra,* **[2005] 2 SCC 591, relied on.**

C

Mulchand Kundanmal **v.** *Raman Hiralal,* **51 Bom. L.R. 86, cited:**

6.2. Even in relation to the courts under the Consumer Protection Act, in terms of Section 16 of the Act, the Chief Justice of the High D **Court has a role to play. [661-F]**

7. The word "consultation" may not mean "concurrence" but this Court is, not called upon to go into the said question in view of the fact that the State Government has agreed to the suggestion of the High Court and had issued a notification. [662-B]

E

State of Haryana **v.** *National Consumer Awareness Group,* **[2005] 5 SCC 284;** *Ashish Handa* **v.** *Chief Justice of High Court of Punjab & Haryana,* **[1996] 3 SCC 145;** *Chandramouleshwar Prasad* **v.** *Patna High Court,* **[1969] 3 SCC 56;** *State of U.P.* **v.** *Johri Mal,* **[2004] 4 SCC 714;** F *L & T McNeil Ltd.* **v.** *Govt. of T.N.,* **[2001] 3 SCC 170;** *Prakash Chandra Maheswari* **v.** *Zila Parishad,* **[1971] 2 SCC 489 and** *Supreme Court advocates-on-Record Association* **v.** *Union of India,* **[1993] 4 SCC 441, relied on.**

8. The power to shift a court from one place to another involves G **a jurisdictional question. The State Government exercised the said jurisdiction in consultation with the High Court. It agreed to the suggestion of the High Court for shifting of the Family Court from one place to the other. For the aforementioned purpose, the High Court can make its recommendations having regard to its control over the** H **subordinate courts on the administrative side. [662-D]**

9. The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straight-jacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. This Court is not unmindful of the development of the law that from the doctrine of Wednesbury Unreasonableness the court is leaning towards the doctrine of proportionality. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted. The Family Court requires special attention. It serves a social purpose. It is a social welfare legislation. The procedures required to be followed in the Family Court are different from the procedures which ordinarily are required to be followed. It must have sufficient space. It must have a counselling centre. The Family Court must house a room for the family counsellors. There has to be sufficient space for conciliation. The atmosphere in a Family Court should be different from an ordinary court. By and large the existing state of affairs in the Family Courts situated in the State is similar. Adequate facilities and infrastructure are not available. The State is enjoined with a duty to establish Family Courts. It is imperative on its part to establish a Family Court where Section 3(1)(a) of the Act is attracted but a court can be established also in cases where Clause (b) thereof is attracted. While constituting a Family Court the State must provide for all requisite infrastructures so as to meet the objects for which the Family Courts are required to be established. A court should not be established only because it is provided for under the Act. The State must be alive to the situation that it has a duty to see that the dispute resolution fora are provided with adequate infrastructure.

[663-F-H, 664-A-D]

10. If according to the High Court the present building is not suitable so as to meet the requirements of the litigants and because of it, it had taken the decision to shift the court to a better place, no fault can be found with the said decision only because the proposed site is situated at a distance of 12 km from the existing court building. [664-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2638 of 2006.

A (arising out SLP (C) No. 25465 of 2005)

From the Judgment and Order dated 8.4.2005 of High Court of Kerala at Ernakulam in W.P.(C) No. 21662 of 2004 (S).

Dr. Rajiv Dhawan, G. Prakash and Deepak Prakash for the Appellants.

B

T.L.V. Nair, C.S. Rajan, Vipin Nair, P.B. Suresh for M/s. Temple Law Firm, E.M.S. Anam and Ramesh Babu M.R. for the Respondents.

The Judgment of the Court was delivered by

C

S.B. SINHA, J. : Leave granted.

Interpretation of the provisions of the Family Courts Act, 1984 (for short "the Act") in the matter of shifting of a family court from one place to another, is involved in this appeal which arises out of judgment and order D dated 8.4.2005 passed by the High Court of Kerala.

Malappuram is a district in Kerala. The District Headquarters is situated at Malappuram. The District Courts, however, are situated at Manjeri which is about 12 kms. North of the said place. The State of Kerala established a family court at Manjeri in the year 1999 in a tenanted premises wherefor a E sum of Rs. 6,668/- was payable by way of monthly rent. The litigant public, the court staff and others concerned were facing a lot of difficulties in attending the said court. The Bar Association of Malappuram submitted a representation dated 03.02.2002 seeking the shifting of the Family Court at Manjeri, to Malappuram whereupon the remarks of the Presiding Officer of F the Family Court and the District Judge, Malappuram were sought for. The District Judge, in his report, pointed out various deficiencies and lack of infrastructure at Manjeri stating that the Family Court is required to be shifted to another building. The Presiding Officer, Family Court also submitted a report *inter alia* stating that the road in front of the building is G a narrow by-lane. The Court is accommodated in the upstair portion of a building. There is only one staircase which is used by all including the Presiding Officer, Court staff and the litigants. On an average 500 to 750 persons remained present everyday before the Family Court, including women with babies and kids, apart from advocates and staff of the court and, thus, the building is clearly inadequate to accommodate all these persons. H

Family counselling, thus, cannot be conducted in such an atmosphere. It was reported that if the power supply is off, the court cannot function. A

A meeting of the Committee of the Judges, Incharge of Administration of the Family Courts was held in the presence of the in charge of the district administration on 29.10.2002. In the said meeting, the President of the Bar Association of Manjeri suggested that the Family Court might be shifted to another building in the said town itself. When the Bar Association was asked to find out a building, one was shown which also did not have the requisite facilities. On the other hand, a Government building was shown to be available at Malappuram, which although, was situate within the Civil Station premises, but otherwise found suitable for the purpose of having a Family Court. According to the High Court, the same satisfied the basic needs for running a family court. B C

Upon consideration of the materials placed before the High Court, a resolution was adopted to recommend to the Government to accord sanction for shifting the Family Court from Manjeri to the Civil Station at Malappuram. The Government of the State of Kerala although initially requested the High Court to see whether the Family Court cannot be continued at Manjeri itself, if a suitable building is available, it yielded to the request of the High Court and issued a Government Order dated 8.7.2004 directing the shifting of the Family Court from Manjeri to Malappuram. D E

A writ petition was filed by the Appellants herein before the Kerala High Court *inter alia* for quashing the said order for shifting the court which by reason of the impugned judgment has been dismissed.

Before this Court, a constitutional question as regards the authority of the State to direct shifting of a Family Court having been raised, this Court sought the assistance of the learned Solicitor General of India. F

Interpretation and application of the provisions of the Family Court *vis-á-vis* the authority of the State and the High Court was raised on the premise that Section 3(1)(a) of the Act will have application in the instant case inasmuch as in the Special Leave Petition it had been averred that the population in the town of Manjeri was more than one million. G

The Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of H

A disputes relating to marriage and family affairs and for matters connected therewith.

The expression "Judge" has been defined to mean "the Principal Judge, Additional Principal Judge or other Judge of a Family Court". Sub-section (1) of Section 3 of the Act is in two parts. Whereas in terms of Clause (a) B of sub-section (1) of Section 3 it is imperative on the part of the State to establish a Family Court for every area comprising a city or town whose population exceeds one million, a discretionary power has been given to the State to establish Family Courts for such other areas in the State as it may deem fit and necessary. Section 7 provides for the jurisdiction of the Family C Court. Section 9 enjoins a duty on the Family Court to make efforts for settlement. In terms of Section 11 of the Act, proceedings are to be held in camera. Section 20 provides for a non-obstante clause. Section 21 provides for a power to make rules in terms whereof the High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the purposes of the Act. Clause (b) of sub-section (2) of D Section 21 *inter alia* empowers the High Court to make rules as regards holding of sittings of Family Courts at places other than their ordinary places of sitting.

The submission of learned Solicitor General as also of Dr. Rajeev E Dhawan, learned senior counsel is that once a Family Court is established in terms of Clause (a) of Sub-section (1) of Section 3 of the Act, the State or the High Court would have no authority to direct shifting thereof to any other area. The applicability of Clause (a) or Clause (b) of Sub-section (1) of Section 3 would arise only if the Family Court is to be shifted from a town whose population is more than one million.

F

Although in the Special Leave Petition, the Appellants took the stand that the population exceeds one million, before us it is categorically stated:

> "The Headquarters of the District is at Malappuram Town. All Government Offices of the said District are located in Malappuram G Town. Malappuram District consists of six Taluks i.e. Eranad, Nilambur, Perintalmanna, Tirur, Thirurangadi and Ponnani. Malappuram Town is geographically located at the centre of the District. The thickly populated taluks of Tirur (population 8,34,817), Thirurangadi (population 6,19,635), Ernad (population 7,82,850) H Perintalmanna (population 5,28,756) and Ponnani are closer to

Malappuram whereas the only taluk of Nilambur is close to Manjeri. It may be stated that the major area of Nilambur Taluk is reserved forest area and it is the least populated (population 5,09,940) taluk of the District as evident from the census records."

Clause (a) of Sub-section (1) of Section 3 of the Act will, thus, have no application in the instant case.

Dr. Dhawan, however, submitted that the emphasis should be laid on the expression 'every area and not the town having a city whose population exceeds one million'. We, with respect, cannot subscribe to the said contention. Clauses (a) and (b) of Sub-section (1) of Section 3 of the Act operate in two different fields. Whereas in the area which would attract Clause (a), the State is bound to establish a Family Court, over areas which are not covered by Clause (a), the State has a discretion to establish or not to establish a Family Court. In the case of the former, the State may not have any power to shift the Family Court from the city or town whose population exceeds one million; but we do not find any reason why a Family Court established at a place having jurisdiction over an area including more than one town or village cannot be shifted from one place to another within that area.

In terms of Section 21 of the General Clauses Act, 1897, (corresponding to the relevant provisions in Interpretation and General Clauses Act, 1925), the power to issue would include the power to amend, vary or rescind, notifications and orders. If a notification could be issued establishing a Family Court at Manjeri, we do not see any reason why another notification cannot be issued by the State to shift the said Court to another place but within the same area of the Family Court. In terms of Section 21 of the General Clauses Act, the State Government will indisputably have jurisdiction to abolish a Family Court and establish one at another place. If such an extensive jurisdiction can be exercised by the State, we fail to comprehend as to why its jurisdiction should be held to be limited in the matter of shifting of Court from one place to another but within the same area, particularly, in view of the fact that in terms of sub-section (2) of Section 3 of the Act even a change in the area is permissible.

It is no doubt true, as has been contended by Dr. Dhawan, that a Family Court is created as a Federal Court under Federal Legislation, but the same, in our opinion, however, would not mean that the High Court will have no

A say at all in the matter of creation or shifting of the Family Courts.

Article 235 of the Constitution of India confers a supervisory jurisdiction upon the High Court over all the courts subordinate to it. Such jurisdiction can be exercised by the High Court in respect of judicial as also administrative matters. Article 236 of the Constitution of India, as referred to by Dr. B Dhawan, provides for an interpretation clause. The expression "District Judge" would not only be an officer who has been specified in Clause (a) of Article 236 but would also be such officer who would otherwise be within the control of the High Court in terms of Article 235 of the Constitution of India.

C The High Court exercises control over the subordinate courts not only in terms of the Constitution of India as envisaged under Articles 235 and 227 thereof but also under other Acts, viz., Code of Civil Procedure and Code of Criminal Procedure. The officers appointed as the Judge, Family Court are selected by the High Courts from amongst the existing cadre of the D District Judges. The ACRs of the said Judges are recorded by the High Court. It remains undisputed that there is a Committee of Judges Incharge of the Administration of the Family Courts. It may be true that the Act is a Federal Legislation but such Federal Legislation has been enacted by the Parliament for other purposes also as, for example, the Motor Vehicles Act, 1988 in terms whereof Motor Accident Claims Tribunals are constituted.

E

The jurisdiction to establish courts is again governed by a State Act. In the State of Kerala, establishment of courts is governed by the Kerala Civil Courts Act, 1957. Section 2 of the 1957 Act provides that in addition to the courts' establishments under any other law for the time being in force, there F shall be classes of civil courts in the State as specified therein. The qualification of the courts as specified in the said Section, therefore, is not exhaustive but inclusive of other courts. Section 3 of the Act provides for establishment of District Courts. Section 7 of the said Act reads as under:

> "7. Court's Location— (1) The place or places which any court G referred to in Section 2 shall be held, may be fixed, any may from time to time be altered by the Government in consultation with the High Court.
>
> (2) The High Court may, with the approval of the Government, direct by notification in the Gazette that all or any class of H proceedings arising in a specified local area in a district which

would ordinarily be instituted in the District Court, may be instituted before an Additional District Judge of that court sitting in a place other than the place where the District Judge sits." A

Submission of Dr. Dhawan, however, is that the State could have created courts under the State Acts but not under a Federal Legislation which was permissible in terms of Entry 1 of List II of the Seventh Schedule of the Constitution of India. Under Entry 1 of List II of the Seventh Schedule of the Constitution of India indisputably the State had the exclusive jurisdiction but the situation has not materially changed by shifting the said provision to List III of the Seventh Schedule of the Constitution of India. Administration of justice, constitution and organisation of courts although now is in the Concurrent List, but only because the Act is a federal legislation, in absence of a clear provision overriding the provisions of the 1957 Act, the machinery provisions contained therein would remain operative. There is no conflict between the provisions of the two Acts; there is no repugnancy. The constitutional power of the High Court to exercise its control over the subordinate courts, has also not been and could not have been taken away by reason of the provisions of the said Act. B C D

In *The State of Bombay* v. *Narottamdas Jethabhai and Another,* AIR (1951) SC 69, this Court has categorically held:

"...In other words, the argument was that the Provincial Government could create a court of general jurisdiction legislating under Entry 1 of List II and that it was then open to both the Central and the Provincial Legislatures to confer special jurisdiction on courts in respect to particular matters that were covered by the respective lists. In my opinion, the contention of the learned Attorney-General that the Act is *intra vires* the Bombay Legislature under Entry 1 of List II is sound and I am in respectful agreement with the view expressed by the Chief Justice of Bombay on this point in *Mulchand Kundanmal* v. *Raman Hiralal,* 51 Bom. L.R. 86..." E F

Mahajan, J. further opined: G

"I am therefore of the opinion that under Item 1 of List II the Provincial Legislature has complete competence not only to establish courts for the administration of justice but to confer on them jurisdiction to hear all causes of a civil nature, and that this power H

A is not curtailed or limited by power of legislation conferred on the two legislatures under Items 53, 2 and 15 of the three lists. On the other hand, these three items confer on the respective legislatures power to legislate when dealing with particular subjects within their exclusive legislative field to make laws in respect of jurisdiction and powers of courts that will be competent to hear causes relating to B those subjects; in other words, this is a power of creating special jurisdictions only."

In *Jamshed N. Guzdar* v. *State of Maharashtra and Others,* [2005] 2 SCC 591, a Constitution Bench of this Court held:

C "42. The general jurisdiction of the High Courts is dealt with in Entry 11-A under the caption "administration of justice", which has a wide meaning and includes administration of civil as well as criminal justice. The expression "administration of justice" has been used without any qualification or limitation wide enough to include D the "powers" and "jurisdiction" of all the courts except the Supreme Court. The semicolon (;) after the words "administration of justice" in Entry 11-A has significance and meaning. The other words in the same entry after "administration of justice" only speak in relation to "constitution" and "organisation" of all the courts except the E Supreme Court and High Courts. It follows that under Entry 11-A the State Legislature has no power to constitute and organise the Supreme Court and High Courts. It is an accepted principle of construction of a Constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of F "administration of justice" and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such G jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. It is not possible to say that investing the City Civil Court with unlimited jurisdiction, taking away the same from the High Court, amounts to dealing with "constitution" and "organisation" of the High Court. Under Entry 11-A of List III the State Legislature H is empowered to constitute and organise City Civil Court and while

constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as "administration of justice" of all the courts including the High Court is covered by Entry 11-A of List III, so long as Parliament does not enact law in that regard under Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is "... Code of Civil Procedure at the commencement of this Constitution ...". From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the concurrent legislative competence. The 1987 Act deals with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting the 1987 Act."

In view of the aforementioned authoritative pronouncements, we cannot accept the submission of Dr. Dhawan that the Family Courts should be equated with courts constituted under the Consumer Protection Act. The Family Courts being courts within the meaning of Article 235 of the Constitution of India as also the 1957 Act would be under the supervisory jurisdiction of the High Court and they cannot be treated to be a class by themselves although their working and functions to some extent are circumscribed by the provisions of the Act and the Rules thereunder.

Even in relation to the courts under the Consumer Protection Act, in terms of Section 16 of the Act, the Chief Justice of the High Court has a role to play.

In *State of Haryana and Another* v. *National Consumer Awareness Group and Others,* [2005] 5 SCC 284, this Court has laid down that the manner and initiation of proposal of consultation with the Chief Justice in terms of Section 16(1)(a) of the Consumer Protection Act must take place in the manner as laid down by this Court in *Ashish Handa* v. *Chief Justice of High Court of Punjab & Haryana,* [1996] 3 SCC 145.

The learned senior counsel contends that the expression "consultation" used in Section 3 of the Act would not mean a primacy. The meaning of the said expression has been considered by this Court in *Chandramouleshwar*

A *Prasad* v. *Patna High Court and Others,* [1969] 3 SCC 56, para 7, *State of U.P.* v. *Johri Mal,* [2004] 4 SCC 714, para 55, *L & T Mcneil Ltd.* v. *Govt. of TN,* [2001] 3 SCC 170, paras 4 and 6 and *Prakash Chandra Maheshwari* v. *Zila Parishad,* [1971] 2 SCC 489, para 20.

B The word "consultation" may not mean "concurrence" as has been held by this Court in *Supreme Court Advocates-On-Record Association and Others* v. *Union of India,* [1993] 4 SCC 441 but this Court is not called upon to go into the said question in view of the fact that the State of Kerala has agreed to the suggestion of the High Court and had issued a notification.

C

Dr. Dhawan then contends that the High Court in making the said recommendations took into account irrelevant circumstances. The doctrine of proportionality, according to Dr. Dhawan, would apply in the instant case.

D The power to shift a court from one place to another involves a jurisdictional question. The State Government exercised the said jurisdiction in consultation with the High Court. It agreed to the suggestion of the High Court for shifting of the Family Court from one place to the other. For the aforementioned purpose, the High Court can make its recommendations having regard to its control over the subordinate courts on the administrative E side.

The Courts are meant for imparting justice. The interest of the litigants should be uppermost in the mind the court while making such a recommendation. The High Court emphasized the need for having a proper building. It emphasised the requirement for shifting of the court building in F the interest of the litigant public. The High Court has taken all possible steps to retain the court at Manjeri. It had not only sought for reports from the Judge, Family Court but also from the District Judge. It has considered the existing infrastructure at Manjeri. Before making the recommendation, not only all relevant factors were taken into consideration, but the Appellant-G Association was also given an opportunity to furnish full details of other suitable buildings available at Manjeri, for the proposed shifting. They could suggest only one building. As per the report of the District Judge, that building was situated at a distance of 2 furlongs south of District Court Building at Manjeri and was quite inconvenient to accommodate the Family Court.

H

The High Court for the aforementioned purpose noticed the report of the District Judge as regard travelling facilities for the litigant public to both the places, viz., Manjeri and Malappuram. It also looked at the geographic situation of the two towns. It took into consideration the representations of both the Bar Associations. We have been shown several photographs to highlight the absence of even the bare minimum requirements to run a court. There is no place for counselling. Even the records are kept in a toilet.

Owing to lack of space, it had become very inconvenient to house the Family Court in the said building. The building was constructed for commercial purposes. There was a lodge (hotel) in the ground floor. A Cooperative Bank is also situated therein. There is only one staircase and it has only one approach through which the Judge, Family Court, litigants, advocates, staff and policemen enter the first floor. The court room is so small that even 15 advocates cannot sit in it. Advocates and litigants have to wait on the verandah or the staircase when the cases are called. The building lacked adequate ventilation. Lady lawyers have no separate area. Even the area earmarked for counselling is used by advocates to change dresses. There is no privacy at all even for the said purpose.

We may now consider the number of cases pending before the Family Court from the local area of Manjeri and of Malappuram :

Case Type	Manjeri Area	Malappuram
MC	265	470
OP	197	353

The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straight-jacket formula. It must be considered keeping in view, the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of Wednesbury Unreasonableness, the court is leaning towards the doctrine of proportionality. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted. The Family Court, even according to Dr. Dhawan, requires special attention. It serves a social purpose. It is a social welfare legislation.

A The procedures required to be followed in the Family Court are different from the procedures which ordinarily are required to be followed. It must have sufficient space. It must have a counselling centre. The Family Court must house a room for the family counsellors. There has to be sufficient space for conciliation. The atmosphere in a Family Court should be different from an ordinary court. We are informed that by and large the existing state B of affairs in the Family Courts situated in the State of Kerala is similar. Adequate facilities and infrastructure are not available. The State of Kerala is enjoined with a duty to establish Family Courts. It is imperative on its part to establish a Family Court where Clause (a) of Sub-section (1) of Section 3 of the Act is attracted but a court can be established also in cases where C Clause (b) thereof is attracted. While constituting a Family Court the State must provide for all requisite infrastructure so as to meet the objects for which the Family Courts are required to be established. A court should not be established only because it is provided for under the Act. The State must be alive to the situation that it has a duty to see that the dispute resolution D fora are provided with adequate infrastructure.

If, according to the High Court, the present building is not suitable so as to meet the requirements of the litigants and because of it, it had taken the decision to shift the court to a better place, no fault can be found with the said decision only because the proposed site is situated at a distance of E 12 kms. from the existing court building. We have been shown a map. From a perusal thereof, it appears that Malappuram is ideally situated geographically for having a court. It is the district headquarters. Number of cases from Malappuram is also more than the cases of Manjeri. The representations of the Bar Associations, although are relevant, cannot be the sole criterion. We F have noticed hereinbefore that representations of the Malappuram Bar Assocation was not the only consideration which weighed with the High Court for making its recommendations. It may be true, as has been submitted by Dr. Dhawan that the State of Kerala in its counter-affidavit has categorically stated that the shift is temporary. As and when a proposed building is made available by the State, steps will be taken to shift the Family Court to that G building. We have no doubt that the State would make an endeavour to make available an exclusive court complex for the Family Court and the High Court will then take steps to have the court located therein.

There is another aspect of the matter which cannot be lost sight of. The H Appellant as affirmed an incorrect affidavit as regards the population of the

town.

After the decision of the High Court, according to Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of the Respondent, about a sum of Rs. 10 lakhs had been spent for making the court room ready. The Special Leave Petition was filed after a period of seven months from the date of the judgment of the High Court. The building is ready for housing the Family Court. It may be that it is within the Civil Station premises, but then we are sure that as and when the State Government is in a position to provide an appropriate site where a Family Court can be constituted, the Court will be shifted to that location. Until then, the present building may be used for holding the courts.

For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed. No costs.

V.S.S. Appeal dismissed.