
(2008) 03 MP CK 0054
In the Madhya Pradesh High Court

Anil Bansal

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7
Income Tax Act, 1961 — Section 131, 132A, 133, 133A, 133B
Penal Code, 1860 (IPC) — Section 285, 34, 420
Petroleum Act, 1934 — Section 23

Citation : (2008) ILR (MP) 1952 : (2008) 2 JLJ 281 : (2008) 3 MPLJ 1

Hon'ble Judges : Prakash Shrivastava, J; Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.

The petitioner describing himself a social activist, as pro bono publico, has preferred this public interest litigation averring that the respondent No. 2, the Minister, Department of Revenue, has purchased large chunk of immovable properties after being elected to the Member of Legislative Assembly in the year 2003 and the sale-deeds have been executed after the election and that apart he has also purchased number of properties in the names of his son and other relatives on many a guise. It is contended that he is a public servant under the provisions of the Prevention of Corruption Act, 1988 (for brevity "the Act") and hence, the Central Bureau of Investigation be commanded to hold an enquiry regarding acquisition of disproportionate assets by abusing the official position and to proceed against him as per law.

The facts which are essential to be adumbrated are that the election to the Members of Legislative Assembly was held in the year 2003 and the respondent No. 2 after being elected was appointed as the Minister of State, Department of Revenue. At the time of filing of nomination form the respondent No. 2 had submitted an affidavit containing the details of movable and immovable properties and the deposits in the bank possessed by him and his family

members. The said affidavit has been brought on record as Annexure-P-1. It is set forth that after having been appointed as a Minister he has purchased immovable properties in his name, in the name of his family members and friends which is manifestly beyond his known sources of income and the properties are valued more than one crore and their valuation is patent from a bare perusal of the sale-deeds. A detailed chart has been given in the writ petition and the documents in support of the same have been brought on record as Annexures-P-2 to P-10.

It is putforth that the said respondent has engaged himself in various illegal activities and pressurized various local authorities to do illegal acts. It is specifically urged that he has interfered in the functioning of Krishi Upaj Mandi in the guise of growth and development of market area which has really no connection with the Krishi Upaj Mandi Samiti. It is alleged that a plot has been allotted in favour of his son Sandeep Patel for establishment of a petrol pump and similarly some of his close relatives have been allotted valuable plots in the area belonging to the market committee. It is further putforth that the said respondent by mis-using his official capacity has got allotted an E-Type Bungalow on Harda-Indore Road belonging to the Revenue Department and the respondent No. 2 has got huge amount spent for modification of the said Bungalow. A reference has been made to the reply of the Chief Minister stating that there is no provision for allotment of government residence in favour of Members of Legislative Assembly in their Home Town. It is alleged that in the marriage of son of the second respondent enormous money has been spent in reception as more than 12000 cards were distributed and the daughter-inlaw had received valuable gifts from him which was worth more than Rs. 50 lacs. He has also abused his official position to get his photographs put on the gates installed at various places of Harda Town. It is averred that the respondent No. 2 has gathered huge amount of money during his tenure as a Member of Legislative Assembly and the Minister of State and he is to be made accountable for the same.

It is contended that in the affidavit filed by the respondent No. 2 at the time of filing of nomination form the sources of income was set to be agricultural land in village Ratatalai wherein he has 1/4th share and some money kept in fixed deposits. It is also urged that he had taken loan for purchase of a jeep and not repaid the same. In this backdrop a prayer has been made which has been indicated hereinbefore.

A return has been filed by the respondent No. 1, Central Bureau of Investigation stating, inter alia, that it has heavy load of work and hence, this Court may not direct for conducting of investigation by it.

A counter affidavit has been filed by the respondent No. 2 contending, inter alia, that the petitioner in the guise of public interest litigation has acted as a proxy of one Rajendra Patel, a rival of the respondent, and an effort has been made to settle the scores. The allegations are reckless in nature and the documents which have been filed are irrelevant and certain things have been blown out of

proportion in order to project an adverse picture. It is set forth that the respondent No. 2 and his family members originally belong to Jaat Community and basically hail from State of Rajasthan and his family has been settled at Harda for a long time. He has been a Member of the Legislative Assembly since 1993 and was inducted as a Minister of State for Technology and Medical Admission. It is the further stand in the return that allegation has been made that he had abused his official capacity as a Minister by getting the house allotted in his name, though allotment of the said house was made by the State Government in June, 2004 prior to his becoming a Minister. The allegation to the effect that certain allotments have been made by Krishi Upaj Mandi Samiti are of no relevance as the action of Krishi Upaj Mandi Samiti has not been called in question and further a statutory remedy is available for the same. The rival of the respondent, Rajendra Patel, had applied for documents under Right to Information Act which goes a long way to show that the petitioner has acted as a proxy of Rajendra Patel. Various allegations have been made against said Rajendra Patel. It is pleaded that Krishi Upaj Mandi has been authorized by the State to lease out plots of mandi area for agricultural products. Krishi Upaj Mandi Samiti took a policy decision to have petrol pump, shops and such other facilities, etc. near the Mandi. A decision was taken by Mandi Samiti to give said plots on long term lease on "highest offer" basis as per State Government policy. An advertisement was issued as per Annexure-R-2/2 and in pursuance of the said advertisement the son of the respondent participated in the auction and as his price was the highest the same was accepted. The follow up action taken in pursuance of the lease has been stated in detail. It is asserted that Rajendra Patel and the present petitioner have tried to get the plots allotted from Mandi but the same did not get fructified due to lack of government policy. The petitioner who has a petrol pump barely one and half kms. away from the new site, has filed the present public interest litigation as his business is likely to be affected. A crime for offences punishable under Sections 420/34 and 285 of the Indian Penal Code read with Section 3/7 of Essential Commodities Act and Section 23 of Petroleum Act was registered against him which entailed in Criminal Case No. 385/2005. After the charges were framed the petitioner preferred a revision which has been allowed on technical grounds and a direction was issued in the revision for registering a criminal case against the wife of the petitioner. The said order passed in the revision has been brought on record as AnnexureR- 2/5. An effort has been made by putting forth certain misleading facts and annexing certain lease-deeds without specifically stating about the contents of the said deeds. The public interest litigation is basically founded on political motives as the documents would go a long way to exposit the same. It is put forth that Annexure-P-17 which is a newspaper clipping does not pertain to the son of the answering respondent but relates to the marriage of his daughter which took place at Harda and no marriage function for his daughter was conducted at Bhopal. It is also disputed that no reception for general public was held at Harda for the marriage of his son. The marriage of his son was held in a Hotel at Bhopal and as a public person the respondent had invited number of

people to attend the function. One open lawn of the Hotel was taken to hold the reception for which amount was paid to the Hotel. It has been categorically asserted that the properties have been purchased by the respondent because of the income earned from the agricultural properties which is owned by the HUF. It is put forth that the HUF of the respondent which is holding the said agricultural land and deriving the income from the same has no other source of income and the entire purchase amount is from the said source and hence, the allegations are baseless, mala fide and unsustainable in law.

A rejoinder affidavit has been filed by the petitioner stating, inter alia, that the assertions made with regard to HUF is incorrect and misleading inasmuch as no HUF is existing at all and the properties are separately owned by all the relatives of the respondent No. 2. Various assertions have been made how the properties in question cannot be regarded as HUF. It is worth noting here that emphasis has been laid on the fact that at one point of time the second respondent had shown his property to be self acquired and hence, the plea of HUF does not stand to reason. It is further asseverated that the respondent No. 2 has got the sale deeds executed in the names of his kith and kin and they are undervalued. Instances have been given about the sale deeds and the bank statements of the joint accounts. In essentials, in the rejoinder it is further clarified how the respondent No. 2 has acquired properties which is beyond known sources of his income and hence, he is liable to be prosecuted. Be it noted various documents have been brought on record.

We have heard Mr. Manikant Sharma, Learned Counsel for the petitioner, Mr. Jayant Nikhra, Learned Counsel for the respondent No. 1 and Mr. V.K. Tankha, learned senior counsel along with Mr. Naman Nagrath and Mr. H.K. Upadhyay for the respondent No. 2

It is submitted by Mr. Sharma that the respondent No. 2 had disclosed his income at the time of his filing nomination papers and compared to the said disclosure, properties owned by him at this stage is enormous and acquisition of such property would go a long way to expose the abuse of power. It is contended by him that registered sale deeds per se would reveal that the respondent No. 2 has abused his power to acquire the property and being a public servant he is liable to disclose the sources of his income. Submission of Mr. Sharma is that the stance taken by the respondent No. 2 that there is HUF and money accrued from the agricultural income has been invested for purchase of other land properties cannot be given credence to inasmuch as the agricultural income is absolutely meager and in any case it was obligatory on the part of the respondent No. 2 to file income tax return when he has purchased such valuable properties. It is canvassed by Mr. Sharma that the allotment of the land in favour of the relatives of the respondent No. 2 by Krishi Upaj Mandi is perceptibly an abuse of power and cannot be countenanced in a democracy which is governed by Rule of Law. It is urged by him that ostentatious and unwarranted show of wealth in the marriage of his son, decoration of residential premises and allotment of premises

at Harda Town beyond the rules are concrete instances of abuse of power. It is vehemently contended that it is a fit case where direction should be issued to CBI to investigate into the matter so that the truth can come out and the respondent No. 2 can be proceeded in accordance with law.

Mr. V.K. Tankha, learned senior counsel for the respondent No. 2 contended that the petitioner has no locus standi to file a public interest litigation of this nature as it has the tenor and character of score settling litigation or to put it differently would amount to personal interest litigation. It has also the contour of publicity litigation because the petitioner has worked as proxy of one Rajesh Patel. It is urged by him that the respondent No. 2 is a part of HUF or not and whether the property is self acquired cannot be dealt with in a writ petition of this nature. It is his further proponentment that the respondent No. 2 was under no obligation to file income tax return under the Income Tax Act as the entire income is agricultural income. It is contended by Mr. Tankha that under the provisions of Income Tax Act as the respondent No. 2 does not have any other income beside the agricultural income the provisions of the Income Tax Act are not applicable and, therefore, no return is to be filed. The Learned Counsel referred to departmental circular No. 493 dated 21.8.1997 which stipulates that the returns showing income below taxable limit are to be treated as "non est" return. Mr. Tankha has argued that the assessee in his capacity as co-parcener of HUF is not required to file return in respect of agricultural income in the light of the statutory provision of the Income Tax Act, 1961 and the circulars issued by the Central Board of Direct Taxes. It is canvassed by Mr. Tankha that the directions to CBI for investigation cannot be issued in a routine manner and the same has to be directed on certain conditions being satisfied and regard being had to the gravity of the matter and the concept of rare occasion which are not remotely noticeable in the case at hand and, therefore, the prayer is absolutely misconceived and hence, the writ petition is to be dismissed with exemplary costs.

Though we have narrated the submissions raised at the Bar in detail, in essentiality four questions emerge for consideration. We would like to compartmentalise and catalogue the issues as under:

- (a) Whether the petitioner has the locus standi to prefer a public interest litigation or whether the present petition has to be thrown overboard on the foundation that the petitioner has been used an axe to grind against the respondent No. 2 and further in a lis of this nature no public interest is involved.
- (b) Whether the allegations made in the petition are to be taken into consideration in entirety or some of them to be considered and if so whether there is warrant for directing an investigation by the CBI.
- (c) Whether the respondent No. 2 was under an obligation to disclose his property acquired by way of registered sale deeds and whether in the obtaining factual matrix regard being had to the totality of circumstances it was incumbent

on the part of the respondent No. 2 to do so.

(d) Whether this Court considering the facts in entirety and concept of public accountability in respect of a public servant can issue a direction for any kind of investigation including taking appropriate steps by the Income Tax Department.

First we shall deal with the issue relating to locus standi of the petitioner as the same has been raised with immense vehemence by Mr. Tankha, learned senior counsel for the second respondent. Learned senior counsel has combatted the assertions made in the petition on the ground that the petitioner has a criminal record; that he has been used as a proxy by one Rajesh Patel; that certain information have been obtained by Rajesh Patel and handed over to the petitioner who has assumed the role of a pro bono publico at the instance of a person who has an axe to grind against the respondent No. 2; and that the lis cannot come under the public interest litigation as is understood. Having regard to the aforesaid factual scenario, it is apposite to refer to certain citations in the field.

In the Janata Dal Vs. H.S. Chowdhary and Others, in paragraph 66 it has been ruled thus:

66. Though we have, in our country, recognised a departure from the strict rule of locus standi as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of locus standi no "rigid litmus test" can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered Jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial, process.

In Mehsana District Central Cooperative Bank Ltd. and Others Vs. State of Gujarat and Others, the Apex Court while dealing with entertaining of public interest litigation in the context of performing of statutory obligations has stated thus:

18...When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if

the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case....

In *R and M Trust Vs. Koramangala Residents Vigilance Group and Others*, it has been held as under:

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities.

In *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, their Lordships have expressed thus:

Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

In *Kushum Lata Vs. Union of India (UOI) and Others*, it has been held as follows:

...Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "raise income litigation". The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not

merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of a public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal. v. H.S. Chowdhary and Kazi Lhendup Dorji v. CBI*. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petition but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India* and *K.R. Srinivas v. R.M. Premchand*.)

In the said case in paragraphs 15 and 16 it has been held as under:

The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests:

(i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu*, and *Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills*. No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (*Buddhi Kota Subbarao (Dr.) v. K. Parasaran*. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

In Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, it has been held as under:

In the instant case, it needs to be noted that we are concerned in this case not with the merits of the allegations. The present petition is filed on acquisition of alleged wealth.

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view it is wrong in law for the court to judge the petitioner's interest without looking into the subject-matter of his complaint and if the petitioner shows failure of public duty, the court would be in error in dismissing the PIL.

It is also equally true that PIL is not maintainable to probe or enquire into the returns of another taxpayer except in special circumstances. It is the ratio of the decision of House of Lords in *Inland Revenue Commrs. v. National Federation of Self employed and Small Business Ltd.* However, when scams take place, allegation of disproportionate assets is required to be looked into. In *M.C. Mehta v. Union of India (Taj Trapezium Matter)* the Division Bench of this Court not only directed CBI to investigate the cases against the bureaucrats but also to enquire into the outflow of Rs. 17 crores released by the State of U.P. in respect of project undertaken by NPCC. In that matter, the income tax returns of the former Chief Minister and other officials were ordered to be collected by this Court. They were directed to be collected from various Income Tax Authorities. The point to be noted is that the source of the funds plays a crucial role in investigations by CBI in matters involving misappropriation of public funds.

In this context we may refer with profit to the decision rendered in *Sunderlal Patwa v. State of M.P. and ors.* (Writ Petition No. 5064/98 decided on 16.9.2003) wherein this Court analysing the decision in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, and reproducing paragraphs 97 and 98 of the said decision expressed the opinion as under:

12. If the aforesaid decision is understood in proper perspective it cannot be said that once the public injury is caused and public interest is affected a public spirited person cannot knock at the doors of Court. In the case at hand the petitioner, as has been pleaded, has brought to the notice of this Court about illegal allotment of land. When the lands have been illegally allotted in violation of the statutory provisions by the State Government or a statutory corporation or a statutory body, in our considered opinion the same would come in the ambit and purview of the public interest litigation. A person can agitate the cause of the collective that the land which belong to the collective is being mis-utilised by a group of person affecting the rights of a common man. When the cause of public at large is canvassed it would be inappropriate to hold that the petitioner does not have the locus standi to approach the court of law. Allegations have been made that there is distribution of the land in favour of some chosen persons. Land belongs to the State. The State has handedover the same to the

authorities which have been constituted under the statutory provisions and they deal with public largesse, and thus they cannot distribute the same in a capricious manner. They cannot be above law. Hence, we come to the irresistible conclusion that the petitioner has the locus standi to prefer the present public interest litigation.

In this context, we may refer with profit to the decision rendered in *Rajnish Mishra v. State of Jharkhand and Ors.* AIR 2004 JHR 115 wherein P.K. Balasubramanyan, C.J. (as his Lordship then was) speaking for the Court, while dealing with the issue relating to creation of unnecessary bodies or appointment of persons not qualified to handle activities of such bodies on the bodies result in eating away funds set apart for the Schemes, opined that a prudent Government in its role as guardian of public interest should cautiously consider whether it is really necessary to form a separate corporation for the purpose of dealing with a particular welfare measure. It is worth noting that the Bench has laid emphasis on public utility and need.

We have referred to the aforesaid decisions to highlight the purpose of public interest litigation, its requisite necessity, its use and abuse, the nature of the controversy to be addressed, the locus standi of petitioner in a public interest litigation and his real effort, the change of the contour of the powerful weapon by some unscrupulous litigants, the mischievous elements who assume the self-styled role of pro bono publico and the role of the court while dealing with such multifaceted and multifaced litigation. In the case at hand though allegations have been against the petitioner with regard to his criminal record, his personal interest as a competitor in business and his acting as a proxy of another political rival, yet the same requires the keen scrutiny before discarding the lis at the threshold on the ground of locus standi.

Before we delve into the nature of allegations we say with certitude that this is not a fit case where direction should be issued, at present. for investigation by Central Bureau of Investigation. Hence, we decline the said prayer for the present.

Presently we shall advert to the allegations, namely, the allotment of land by the Krishi Upaj Mandi in favour of the son of the respondent No. 2 and the allotment of house at Harda in favour of the second respondent and its modification and innovation by the Public Works Department. It is worth-noting that apart from the making bald allegations that there has been abuse of power by the respondent No. 2 with regard to allotment of cite in favour of his son, nothing has been really stated. In a public auction his son had purchased the land. Be that as it may, the son of the respondent No. 2 has not been arrayed as a party, Hence we do not intend to dwell upon the said challenge in this public interest litigation.

As far as allotment of house at Harda is concerned, it is only put forth that there is no rule or provision for allotment of such quarters at Harda. In our considered

opinion, as presently the same does not really deserve to be adverted to in a public interest litigation of this nature inasmuch as nothing has been brought on record how the same is illegal or irregular. Hence, we restrain ourselves from advertng to the said facet.

The next aspect relates to purchase of property in the names of wife, son, brother-in-law, mother-in-law, brother and brother's wife. On a perusal of Annexure-P/2 it appears that 5.611 hectares of land has been purchased in the name of Sudeep Patel, son of the respondent No. 2 on payment of consideration of Rs. 8,91,000/-. As per sale-deed contained in Annexure-P/3 2.02 hectares of land has been purchased in the name of Smt. Rekha, wife of the respondent No. 2 on payment of consideration of Rs. 3,88,000/-. It is perceivable from Annexure-P/4 that 5.771 hectares of land was purchased in the name of Sandeep Patel, another son of the respondent No. 2 on payment of consideration of Rs. 10,93,100/-. On a perusal of Annexure-P/5 it is noticeable that a sum of Rs. 11,85,300/-has been spent for purchase of land admeasuring 5.768 hectares in the name of Smt. Kesharbai, mother-in-law of the said respondent. On a scrutiny of Annexure-P/7 it is vivid that Rs. 6,89,600/-has been utilised towards consideration for purchase of 2.17 acre of land in the name of the wife and some Ors. Annexure-P/7 and AnnexureP/ 8 show purchase of land admeasuring 4.80 acres and 6.68 acres for a sum or Rs. 13,86,600/-and 20,08,500/-respectively in the names of wife and Ors. Annexure-P/9, another sale-deed, shows that towards purchase of an area admeasuring 1.43 acres Rs. 1,84,000/-has been paid and the said transaction has been made in favour of the brother of the second respondent. Annexure-P/10 shows purchase of 5.77 acres of land on payment of Rs. 2,57,000/-in the names of his wife and the brother. Thus, the total land purchased is 68,776 acres and the amount of consideration is Rs. 80,83,100/-and stamp duty of Rs. 7,34,680/has been paid thereon for the purpose of registration. Thus, a total sum of Rs. 88,17,780/-has been spent. Proponement of Mr. Tankha is that the entire purchase of the properties have been done from common pool of HUF funds by the present Karta of the family, namely, Shri Harnath Patel. It is urged by him that the Karta in his own wisdom has decided to purchase these assets in names of different members of the family keeping in view the possibility of future partition and family welfare. Properties have been purchased by Karta in a manner in which the properties falling in respective share of the members of the family would already be defined to a great extent for the future. It is also submitted that after being issued notice in this petition, the answering respondent and his family members have furnished the entire details of their agricultural land holdings and also estimates of their income derived from agriculture to a Chartered Accountant for verification. It is submitted that the details furnished regarding the agricultural income have been examined by the said Chartered Accountant, who has also certified the same and has given his opinion that the cash inflow in the form of agricultural income on the basis of land holdings of family, as being claimed by the respondent and his family members is well justified and acceptable.

True it is the stand of the respondent No. 2 is that "Karta" in his own wisdom has taken the decision to acquire the assets in the names of different members of the family keeping in view the possibility of future partition and family welfare and there may be opinion of the Chartered Accountant, yet the question remains whether the respondent No. 2, as a public servant, has an accountability or not. Mr. Tankha submitted that in the provisions of the Income Tax Act the respondent No. 2 is under no obligation to file a return in respect of agricultural income as the whole income is based upon agricultural sources. The learned Senior Counsel has laid immense emphasis on the Circular No. 493 dated 29-8-1997 which shows that no return need to be filed if the income is below the taxable limit. The Learned Counsel further submitted that the respondent No. 2 has not filed any return in respect of the agricultural income in view of the statutory provisions.

In this context we think it apposite to analyse certain provisions of the Income Tax Act, 1961. Under the provisions of the Act every person is required to file his return as contemplated u/s 139 of the Act. Section 2(31) of the Act defines 'person' which includes the HUF. Proviso to Section 139(1)(b) provides that a person resides in such an area as may be specified and who is in occupation of immovable property existing a specified floor area, whether by way of ownership tenancy or otherwise, is required to furnish a return. Be it noted, the said provision is attracted and applicable between the assessment years 1977-1978 and 2005-2006. If the return is not filed proceedings for assessment can be initiated under Sections 147, 148, 141 and 151 of the Act.

In a case where a person is having substantial assets which are not disclosed in the return of income then the said investments can be treated to be unexplained under Sections 69, 69A, 69B and 69C of the Act if the person fails to offer an explanation regarding the nature and source of the investment or if explanation which is offered, by such person is not satisfactory. The Income Tax authorities have powers under Sections 131, 132A, 133, 133A and 133B to collect evidence in respect of any income, books, documents etc. which the Income Tax authorities feel are relevant and necessary for the purpose of assessment.

The assessment of income which has not been shown in the Income Tax return or income in respect of which no return has been filed at all can be made by the Income Tax authorities in accordance with Sections 147, 148, 149 and 151 of the Income Tax Act which provide for assessment to income escaping assessment. The only requirement is that before initiating proceedings, the Assessing Officer has to record the reasons for issuance of notice.

In a case where assessment is completed on an income which has not been offered for tax, or which has been concealed or particulars of which have been inaccurately disclosed, penalty can be levied u/s 271 of the Act. Besides imposition of penalty, prosecution can also be initiated under Sections 276C, 276CC, 276D & 277 of the said enactment.

It is also worth-noting that the provisions of Wealth Tax Act are also applicable in

a case where a person owns immovable properties. Section 3 of the Wealth Tax Act provides for charge of wealth tax at the rate of one per cent of the amount by which the net wealth exceeds fifteen lakhs rupees. Section 2(EA) of the enactment defines "assets" which includes any building or land, urban land, cash in hand, in excess of fifty thousand rupees. Section 35B of the said enactment postulates for prosecution in a case where there is failure to furnish returns of net wealth.

We have referred to the aforesaid provisions of the Income Tax Act and the Wealth Tax Act to show that circumstances do exist for taking steps under the said enactments. The assertion that it is an HUF and the income earned would meet the requirement cannot be given instant credence. The respondent No. 2 holds a public office. He has public accountability. A public figure unquestionably is accountable for his actions. He has to be guided by Rule of Law. It has been stated long back, however high one is, he is under the supremacy of law. The basic characteristics of Rule of Law do not make a distinction between the weakest and the mightiest. Maintenance of purity and sustenance of probity are the basic features of good public image. Any one who occupies a high office must remember that he enjoys public power and is under obligation to exercise the same in public interest and bear the image which is expected of him in the public good. True value of public figure becomes a truism when it has transparency. In a different context the Apex Court in *Rameshwar Prasad and Others Vs. Union of India (UOI)* and Another, has stated that there is no place for hypocrisy in democracy. Norms of transparency have to rule supreme. Law does not countenance any kind of guise or deception. It is friendly only with the truth. In this context we may refer with profit to a Division Bench decision of this Court rendered in *Kailash Joshi v. State of M.P. and Ors.* 1989 J.L.J. 127 wherein C.P. Sen, J. expressed the opinion that though averments made in the petition are not accepted yet the Chief Minister has to clear the clouds in the public interest in order to cleanse the atmosphere which is vitiated and polluted and according to his very first statement in the Vidhan Sabha 28 years back. Truth has to echo all the time in a democratic body polity. The collective wants an explanation. The society demands transparency. Democracy commands that there should be no hypocrisy. The nation deserves that its public figures come with clean hands.

In view of the aforesaid, we are inclined to direct the Chief Commissioner, Income Tax, Bhopal to initiate a proceeding against the respondent No. 2, a member of alleged HUF. The facts which have been enumerated in the petition should be treated to have the reasons attributes to believe as required u/s 147 of the Income Tax Act. We may hasten to clarify, the Income Tax authority shall proceed as per law and Rule of Law must prevail. The Registrar -Judicial is directed to send a copy of the order passed today to the Chief Commissioner of Income Tax, Bhopal to do the needful. In addition to the aforesaid, a copy of the order along with the photocopies of the sale deeds annexed to the writ petition be handed over to the Learned Counsel assisting the learned Senior Standing Counsel for the Income Tax Department to do the needful.

Accordingly, the writ petition is disposed of. There shall be no order as costs.