

(1998) 06 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 127 of 1995

Narayan Diwakar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 226(2), 226(3)
Goa, Daman and Diu Land Revenue Code, 1968 — Section 180, 199(2), 32(3)
Goa, Daman and Diu Land Revenue Rules, 1969 — Rule 4, 4(1), 5
Judicial Officers Protection Act, 1850 — Section 1
Penal Code, 1860 (IPC) — Section 120B, 193, 219, 228, 420
Prevention of Corruption Act, 1947 — Section 13(1), 13(2)

Citation : (1998) 2 GLT 528

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : J.M. Choudhury, R.P. Sarma, N. Saikia, A.K. Roy and B. Chakraborty, for the Appellant; D.K. Das, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This application under Article 226 of the Constitution is preferred for issuance of a writ of Mandamus/Certiorari for quashing the First Information Reports registered as R.C. 64(A)/93-BOM, R.C. 65(A)/93-BOM and R.C. 66(A)/93-BOM by Mr. A.K. Asthana, Inspector of CBI, ACB, Bombay against the Petitioner for certain acts done in exercise of statutory powers under the Goa, Daman and Diu Land Revenue Code, 1968 and the rules framed thereunder.

2. I have heard Mr. J.M. Choudhury, learned senior counsel assisted by Mr. R.P. Sarma and others for the Petitioner and Mr. D.K. Das, learned Counsel for the Respondents.

3. It may be mentioned at the outset that the name of Smt. Sabitri Silas, Respondent No. 4, was struck off vide order dated 18.2.98 as no relief was sought against her in this writ petition.

4. Shorn of details, the Petitioner's case is that he is a member of Indian Administrative Service and was posted as Secretary, Department of Finance in the administration of Daman, Diu and Dadar and Nagar Haveli in the year 1992. In addition, he was also discharging functions of Special Secretary of three other major Departments and of Managing Director and Chairman of various Corporation and Boards. During that time, he was also given the charge of the office of the Collector, Daman, as the regular incumbent was on leave and he had continued as In-charge Collector from October, 1992 to April, 1993. In the month of March, 1994 he was transferred to Arunachal Pradesh and posted as Secretary in the Department of Industries and Mines. In September, 1993 Shri A.K. Asthana, Inspector, CBI, registered three First Information Reports against him and others alleging that during his tenure as In-charge Collector, the Petitioner had issued Non-Agricultural (N.A.) permission without verifying the original map. On 1.4.94, while posted at Itanagar, Arunachal Pradesh, the Petitioner received a summon through the Chief Secretary from the Superintendent of Police, CBI, Bombay directing him to meet Shri Asthana (Inspector) in connection with investigation of R.C. 64(A)/93 at Daman on 27.4.98. It is alleged that Shri Asthana, on being influenced by Smt. Sabitri Silas, the then Collector of Daman (Respondent No. 4) registered the First Information Reports. It is further alleged that Smti. Silas had always nurtured ill-will against the Petitioner who as Finance Secretary pointed out various irregularities committed by her and, as such, she had managed Shri Asthana to register the First Information Reports on 6th and 7th June, 1994. The Petitioner appeared before the Inspector and gave his statement. The Inspector was reluctant to incorporate his statement regarding the report given by Smti. Silas (Respondent No. 4) and the views of Daman administration, and thus the Inspector exhibited his bias and vindictiveness towards the Petitioner. According to the Petitioner, as per Goa, Daman and Diu Land Revenue Code, 1968, issuance of Non-Agricultural Permission is a statutory duty of the collector and such permission is given for conversion and use of land from agricultural to industrial purpose.. The Collector is required to issue non-agricultural permission in consultation with the Town and Country Planning Department and various other authorities. The non-agricultural permission in all the three cases referred to above were granted by the Petitioner on the basis of the report and in accordance with the recommendations of the Town and Country Planning authorities. This department governed by the provisions of ODD Town and Country Planning Act, 1974 for preparation and notification of the regional plan, is also entrusted with the task of formulation, implementation and interpretation of the regional plan. Moreover, this department all along maintained that they are competent to make necessary adjustments and modification in the plan as per provisions of the ODD Town and Country Planning Act, 1994. This official stand of the department was incorporated in the affidavit sworn in by the Junior Town Planner in writ petition No. 3440 of 1994 pending in the Bombay High Court. The clearance given by the Town and Country Planning Department was in exercise of their statutory powers and the Collector was not legally competent to go beyond the recommendations of the said department.

Therefore, the Petitioner (Collector) issuing non agricultural permission on the recommendation of the Town and County Planning department, unless malafide is shown, can not be proceeded against. Hence, this petition for quashing the First Information Reports so far they relate to the Petitioner.

5. In the affidavit-in-opposition filed on behalf of Respondent Nos. 2 and 5, Shri A.K. Asthana, Inspector, CBI raised the question of maintainability of this writ petition before this Court apart from denying the allegations made in the writ petition. It is also submitted that the Petitioner instead of invoking the extraordinary powers of this Court for quashing the First Information Reports could have taken recourse to the provisions of Code of Criminal Procedure. In para 10 of the counter, it has, however, been admitted that the function of the Collector in granting non-agricultural permission is a judicial function although it has been maintained that the Collector cannot act beyond judicial parameters for showing undue favour to private party.

6. From the pleadings as reproduced above and after hearing the learned Counsel, the following points are formulated for the purpose of disposal of this writ application:

- (1) Whether this High Court has jurisdiction to entertain the writ petition?
- (2) Whether the First Information Report discloses any prima facie offence?
- (3) Whether the function of the Collector in granting non-agricultural permission is a judicial function and if so, whether the Collectors is immune from any legal action?

7. Let us at the beginning discuss about the jurisdiction. Shri D.K. Das, learned Counsel for the Respondent Nos. 2 and 5 argued that the cause of action in the instant case has arisen at Daman within the territorial jurisdiction of Bombay High Court and, therefore, this Court has no jurisdiction to entertain the writ petition. In support of his argument Shri Das has referred to the following case laws:

- (1) Election Commission, India Vs. Saka Venkata Subba Rao and,
- (2) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others,
- (3) AIR 1979 Cal 254
- (4) State of Rajasthan and Others Vs. Swaika Properties and Another,
- (5) R.S. Raghunath Vs. State of Karnataka and another,
- (6) AIR 1998 SC 114 (net relevant)

8. Shri J.M. Choudhury, learned senior counsel, however, submitted that this case stands on a different footing from those referred to by the Respondents and argued that the provisions of Article 226(2) of the Constitution permits this Court to adjudicate the matter for the following reasons:

(1) The Petitioner was transferred to Arunachal Pradesh and he has not left Daman out of his own volition to avoid jurisdiction of Bombay High Court.

(2) The Petitioner was served with a summon at Itanagar, Arunachal Pradesh, to appear before the Inspector at Bombay. The fall out of the summons served at Itanagar has given rise to the cause of action partly at Arunachal Pradesh within the territorial jurisdiction of this Court.

(3) The writ is sought to be issued on the Union of India and its investigating agency. They have their offices through out the North Eastern States.

(4) The Union of India and its investigating wing are well represented in this case through their Standing Counsel and they have entered appearance and filed affidavit and therefore, no prejudice will be caused to them.

(5) Rule was issued in this case on 19.5.95 and the stay was granted on 22.9.95. Therefore, it will be against the principles of natural justice to reject this petition on the ground of jurisdiction at this stage.

9. Keeping in mind the argument advanced by the parties, let us now refer to the case laws cited on behalf of the Respondents.

In Election Commission, India Vs. Saka Venkata Subba Rao and, in para 6, the Supreme Court held as follows:

...new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such direction, etc. "for any other purpose" being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England. But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place the power is to be exercised "throughout the territories in relation to which its exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories", which clearly implies that they must be amenable to its jurisdiction either by residence- or location within those territories.

10. In AIR 1979 Cal 254 , the above ratio was taken into consideration (along with the ratio laid down in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., and AIR 1961 SC 532). The Calcutta High Court held that the provisions as to Clause (1-A) and Article 226(1) were inserted in the light of the decision of the Supreme Court as mentioned above and now the location of the subject matter or the parties to the controversy is immaterial for the purpose of determining the jurisdiction of the High Court under Article 226(1), still then, the cause of action or any part thereof should arise or accrue within the territorial jurisdiction of the Court concerned.

11. In Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, the Supreme

Court held as follows:

It is argued that the wording of Article 226 that the High Court shall have power to issue writs or directions to any person or authority within its territorial jurisdiction posits that there exists a person or authority to whom it could be issued, and that in consequence, they cannot be issued where no such authority exists. We are of opinion that this is not the true import of the language of the Article. The scope of Article 226 is firstly that it confers on the High Courts power to issue writs and directions, and secondly, it defines the limits of that power. This latter it does by enacting that it could be exercised over any person or authority within the territories in relation to which it exercises its jurisdiction. The emphasis is on the words "within the territory" and their significance is that the jurisdiction to issue writ is co-extensive with the territorial jurisdiction of the Court. The reference is not to the nature and composition of the Court or Tribunal but to the area within which the power could be exercised.

12. The provisions laid down in the above three cases according to Shri Das, clearly lay down that the writ jurisdiction of a High Court is co-extensive with the territorial jurisdiction of the Court and as such the cause of action in the instant case having arisen at Daman, this High Court is without jurisdiction to hear the writ petition.

13. The law as emerges from above has not been controverted by Shri Choudhury, the learned senior counsel. According to him, the cause of action having partly arisen at Itanagar and the offices of the CBI being located within the jurisdiction of this Court, a distinction can be made out to justify the maintainability of this writ petition before this Court. According to him the decision rendered in State of Rajasthan and Others Vs. Swaika Properties and Another, relates to a dispute regarding immovable property and this can not be determinative of the issue involved in the case. He further argued that the decision of the Supreme Court rendered in (1988) 1 SCR 397 shows that the bail granted by the Bombay High Court in that case was cancelled as the order was passed ex-parte and the question of jurisdiction was not decided in that case. According to him, the decisions in 1992 Suppl. (1) SCR 335 deals with the situation when an FIR can be quashed and in 1992 Suppl. (1) SCR 228 deals with "bias" on the part of the investigating officer. These decisions do not negate the contention that this Court has jurisdiction to hear this writ petition as cause of action has partly arisen at Arunachal Pradesh. In support of this contentions, the learned Counsel Shri Choudhury also relied upon the decisions in The Bahrain Petroleum Co. Ltd. Vs. P.J. Pappu and Another, In most of these cases the question of jurisdiction was decided on a different context although emphasis was also laid on location or residence and amenability of the authority against whom the writ is sought to be directed.

14. The above submission needs examination. It is true that the Union of India and the CBI have their offices located throughout the North Eastern States, and the notice, Annexure-"A" was served on the Petitioner at Itanagar. The question

is whether the service of notice has given rise to the cause of action in part? There is no doubt that the jurisdiction of the High Court can be invoked if the cause of action wholly or in part arises within the territory in relation of which the High Court exercises jurisdiction. The expression "cause of action" has not been defined either in the Constitution, or in the Code of Civil Procedure. As per provisions of Section 20(c), accrual of cause of action wholly or in part also confers jurisdiction. The expression "cause of action" is undoubtedly very intimately connected with the right to sue. There can be, of course, no right to sue unless there is accrual of the right and its infringement or at least a threat to infringe that right. In *Joshi v. State of Madhya Pradesh* 1953 Privy Council 9, it was decided that infringement of right gives rise to cause of action and consequently the right to approach the Court. In this context the question arises whether service alone of an order or notice within the territorial limit of the High Court would give rise to cause of action at least in part within that territory. The answer to this question will depend on the nature of order/ direction issued. In *State of Punjab v. Amar Singh* AIR 1966 SC 1313, it was held that mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. It was pointed out that an order of dismissal passed by an appropriate authority does not take effect from the date on which the order is passed, unless the order is communicated and served upon the officer concerned. As it was a case of dismissal, the Court of the place where service of the order was effected held to have jurisdiction. If we draw an analogy, we find that in the instant case the service of notice directing the Petitioner to appear before the Inspector was served at Itanagar. This service of notice directing him as above is definitely an infringement of right or a threat to infringe his right. It cannot be argued with logic that the same ratio cannot be applied in a case of threatened criminal prosecution. If the Petitioner was served with a notice of termination of service at Itanagar, he would have the right to move this Court and not on service of a notice threatening criminal prosecution is a proposition unacceptable in law. Therefore, it can be said that the Petitioner was vested with the right to sue as soon as the notice was served upon him. This view can be further substantiated if we consider that the cause of action arises only when the aggrieved party is vested with a right to apply to the appropriate Court, and the receipt of the order is an immediate cause of action. There is no doubt that without receipt of the order, one may not be able to come to the Court and, as such, its receipt at a particular place may give rise to a part of the cause of action at that place. The Calcutta High Court dealt with this matter in *Uma Shankar v. Union of India* 1982 (2) CU 378. In that case the order of dismissal was communicated at Calcutta. The Calcutta High Court held that it has the jurisdiction to entertain the petition challenging the validity of the order of dismissal. The Calcutta High Court in *Industrial Fuel Marketing Co. Vs. Union of India (UOI)*, entertained the writ petition on the ground that the office of the prosecutor is located within territorial limit of that High Court. According to Bombay High Court AIR 1967 Bom 355, the effect of the order passed by a Governmental authority at Delhi falls at the Petitioner at Bombay, gave rise to cause of action within the territorial limit of

Bombay High Court. After due consideration of all these facts and the reason cited by the learned Counsel for the Petitioner quoted in Para 8 of this judgment, this Court is of the opinion that it has the jurisdiction to entertain the petition and dispose of it on merit since the cause of action partly arose at Itanagar within the territorial jurisdiction of this Court and also because of the Respondents, the Union of India and CBI (Respondents 1, 2 and 5) are amenable to the jurisdiction of this Court. This view, however, cannot be a straight-jacket formula for all the cases. Its application will be warranted on the background and circumstances of each and every case.

15. The next point argued by Shri Choudhury is that the question of jurisdiction cannot be reopened at this stage since the writ petition was filed on 10.1.95 and after service of summon on 16.1.95, this Court issued the rule on 19.5.95 alongwith a notice to show cause as to why the interim prayer for stay would not be granted. The Respondents did not file any objection to the prayer for interim relief except that in the affidavit filed on 27.6.95 and 5.7.95, they raised the question of jurisdiction. This Court by order dated 27.6.95 granted stay which was eventually vacated on 8.8.95. It was vacated obviously in view of the provisions of Article 226(3) of the Constitution. Thereafter, on 22.9.95, in the Misc. petition for stay, Respondent Nos. 2 and 5 sought time to file objection against the prayer for interim relief. The learned Single Judge while allowing time also ordered that the interim order passed on 27.6.95 shall continue. But even thereafter, the Respondents did not file any objection for vacating the interim order. The main case was taken up for hearing on 18.2.98. For the first time the Respondents argued on the point of jurisdiction and the case was adjourned for order. Thereafter on 16.3.98, after hearing both the parties, it was decided to dispose of the writ petition in its entirety. According to Shri Choudhury, the stay order granted on 22.9.95 has not been challenged in any manner and no appeal was filed. This order was passed long after the counter affidavits were filed by the Respondents. Since no appeal was preferred, Shri Choudhury argued, the stay become absolute. According to him, it would be unjust to refuse the petition at this belated stage.

16. Shri Choudhury cited the principles enunciated by a Division Bench of this Court in *Umesh Borgohain v. Indian Drugs and Pharmaceutical Limited and Ors.* reported in (1993) 2 GLR 9 and the ratio laid down in this case, according to Shri Choudhury, squarely covers the circumstances of this case and, applying the said ratio, this Court may not reject the petition on the ground of maintainability.

17. In *Umesh Borgohain (supra)*, the Division Bench of this High Court held as follows:

The objection as to territorial jurisdiction should be taken at the earliest opportunity. In this case, objection to jurisdiction was taken for the first time in the course of the hearing of the main petition. The Respondents could have raised the point of territorial jurisdiction at the time of passing the interim orders. Instead, they were filing applications time and again for modification of

the interim order or otherwise as already stated. The Respondents had implemented all the directions issued from time to time by this Court. On the ground of lack of territorial jurisdiction, if the writ petition is to be returned for presentation to the proper Court, there will be complications as the interim orders have been given effect to. The affidavit-in-opposition was filed on 29.5.90, after the passing of the interim orders, stating that this Court has no jurisdiction to entertain the writ petition as the suspension order was issued at Ahmedabad. After the filing of the affidavit-in-opposition also, the Respondent did not take objection to jurisdiction. For instance, the Respondents did not raise any objection while application of the Petitioner, for directing the Respondents to pay subsistence allowance at Guwahati was heard and disposed of on 18.6.90. If the question was raised earlier, this Court would have considered the same, and no occasion would have arisen to pass the interim orders or any order affecting the Respondents. If it was found that this Court has no local jurisdiction.

In the facts and circumstances of the case, discussed above, we are of the view that objection as to the local jurisdiction has been waived by the Respondents, and that there would not be failure of justice if the petition is heard and disposed of by this Court. Therefore, we are not dealing with the question as to whether this Court has the jurisdiction.

18. The principles highlighted in the aforesaid case are binding on this Court. The circumstances in both the cases are also strikingly similar. It is already stated before that he is innocent is no less serious than an order of suspension or dismissal. Considering all these aspects, I find that the Respondents do not have any reason to be prejudiced if this petition is heard and disposed of by this Court. As there will be no failure of justice, I am inclined to hold that this petition be disposed of accordingly on merit by this Court.

19. Let us now examine the allegation made in the three FIRs, that is, Annexures C, D and E registered under Sections 120B read with Sections 467, 468, 471 and 420 IPC and Section 13(2) read with Section 13(1)(d) of P.C. Act, 1968. In all the three FIRs, it has been alleged that the Petitioner, that is, A-1 "without verifying the original map issued the non-agricultural permission." This is the only act of omission for which the Petitioner has been impleaded as an accused in the aforesaid cases. Whether the alleged failure or omission on the part of the Collector (Petitioner) constitutes an offence is of prime consideration in this case. For this purpose, it is considered necessary to refer to the relevant provisions of law prescribing the procedure for issuance of non-agricultural permission. The Goa, Daman and Diu Land Revenue Code, 1968 (Act 9 of 1969) was enacted by the Legislative Assembly to regulate the land and revenue system in the Union Territory of Goa, Daman and Diu. In exercise of the powers conferred by Sub-section (2) of Section 199 of the aforesaid Act, Rules have been framed in 1969 prescribing procedure for conversion and use of land and non agricultural assessment. Rule 4(1) reads as follows:

4. Conditions on which permission may be granted - (1) Permission to convert

the use of agricultural land for any non-agricultural purpose, or to change the use of land from one non-agricultural purpose to another non-agricultural purpose may be granted by the Collector after consulting the Town and Country Planning Department and subject to the following among other conditions, that is to say....

20. It would appear from the aforesaid provision that the Collector has been authorised to issue non-agricultural permission after consulting the Town and Country Planning Department only. Rule 5 provides as to when permission as sought under Rule 4 shall be deemed to have been granted under provisions of Sub-section (3) of Section 32 of the Code. Sub-section (3) of Section 32 of the Code (Act 9 of 1969) reads as follows:

If the Collector fails to inform the applicant of his decision within ninety days from the date of acknowledgement of the application, or from the date of receipt of the application if the application is not acknowledged, or within fifteen days from the date of receipt of application for a temporary change of user or where an application has been duly returned for the purpose mentioned in Clause (b) of Sub-section (2), then within ninety days from the date on which it is again presented duly complied with, the permission applied for shall be deemed to have been granted, but subject to any condition prescribed in the rules made by the Government in respect of such user.

21. The position of law as referred to above requires the Collector to issue non-agricultural permission in consultation with the Town and Country Planning Department, and if an application for such conversion is not disposed of within 90 days permission applied for shall be deemed to have been granted. The only requirement as per provisions of law is that the Collector shall consult the Town and Country Planning Department before issuing non-agricultural permission. In the instant case proposal for conversion of the aforesaid land was recommended by the Town and Country Planning Department and this fact has not been disputed by the Respondents in their affidavit-in-opposition. Here we may refer to the statements made in para 21 of the writ petition wherein it has been stated that as per practice, while granting non-agricultural permission, the Collector also obtains reports from other departments like Forest, Power, Industry etc. and in all the cases under investigation, the permission was granted without overruling the reports of any of the department. Provisions of law do not require the Collector to verify the map before issuing non-agricultural permission. In the instant case there is no allegation that the Collector was aware that the original map was not referred to by the Town and Country Planning Department and, as such, the question of further enquiry and verification with regard to the genuineness of the map did not arise. His only legal duty was to consult the Town and Country Planning Department which he did. In fact, he issued the certificate on the recommendation of this Department only. That being the position, the Collector does not appear to have violated any provision of law. We may refer to the statement made in para 20 of the writ petition wherein it has been stated

that the Town and Country Planning authorities have all along maintained that they are competent to make necessary adjustment and modification under the Act and this has been stated not only officially but also in the affidavit filed by Shri Kanta Rao, Junior Town Planner, Daman, before the Hon"ble High Court of Bombay in writ petition No. 3440/94. The affidavit has been produced and annexed as Annexure G. However, this Court cannot take notice of the aforesaid affidavit in view of the fact that the matter is pending before the Bombay High Court. This statement made in para 20 of the writ petition has been dealt with in para 14 of the affidavit-in-opposition filed by Respondent Nos. 2 and 5. No where in para 14 the stand alleged to have been taken by the Town and Country Planning Department has been denied.

22. The discussion above leads to the irresistible conclusion that the Collector has not done anything in violation of the statutory rules prescribed by the Government. We may also refer to the views of the Daman Administration in this matter available at Annexure H. The Daman Administration made an enquiry and came to a finding completely exonerating the Petitioner. Shri Das, learned Counsel for the Respondent argued that the map relied upon was not genuine. Even if, the map was not genuine, it is for the Town and Country Planning Department explain and not the Collector. The Town and Country Planning Department is the authority for preparation of such maps and they have been insisting that they have the power to make alteration and adjustments in the map.

23. There is no material in any of the three FIRs to conclude that undue favour was shown by the Collector to the private land owners. It may be stated here that the law permits conversion of private land for non-agricultural purposes. Even there is a deeming clause u/s 32(3) of the Code. By this conversion, no wrongful loss has been caused to any one. The permission having been issued within the framework of the prescribed Rules cannot be dubbed and denounced as an act of undue favour in the absence of any material to suggest malafide. Hypothetical conclusion cannot set criminal law in motion. It can, therefore, be stated unhesitatingly that the ingredients of the provisions of Section 120(B), 467, 468, 471 and 420 of IPC and Section 13(1)(d) of P.C. Act are apparently absent.

24. The Collector's responsibility while granting the non-agricultural permission being restricted to consultation with the Town and Country Planning Department only, and, this having been done apart from obtaining clearance from other departments, and there being no allegation in the FIR of any malafide, the Collector (Petitioner) cannot be indicted in any manner.

25. The Petitioner has also alleged bias on the part of Shri Asthana, Inspector, Respondent No. 5. The confidential file under sealed cover was placed by the learned Counsel for the Respondents for inspection by this Court. The documents including the statements of Sri Kanta Rao, Junior Town Planner and Smti. Sabitri Silas have been perused. Since the investigation is directed against other

persons also, it is thought appropriate not to record any observation on this point. What at best can be said in the given circumstances is that the investigation against the Collector has been misconceived.

26. The learned Counsel for the Petitioner further argued that the Collector discharged his judicial function in good faith and as such he is immune from both civil and criminal liability. Section 180 of the Code of 1968 (Act 9 of 1969) provides that a formal or summary inquiry under this Code shall be deemed to be judicial proceeding within the meaning of Section 193, 219 and 228 of the IPC. Sections 32(1) and (2) show that an enquiry is necessary for disposal of a petition for conversion of land by the Collector. The provisions of law as stated above clearly indicate that the Collector's role in granting permission is a judicial function and his office is a civil Court for purposes as provided u/s 180 of the Code.

27. Since the Collector was discharging his judicial function in issuing the non-agricultural permission, the Collector (Petitioner) in the instant case is immune from civil and criminal liability. The definition of the word "Judge" includes the Collector and Section 77 of the IPC inures the "Judge" from criminal liability for any act done in good faith. So far the protection under the Judicial Officers Protection Act is concerned, the latest decision rendered by the Supreme Court covering this matter in *S.P. Goel v. Collector of Stamps* in AIR 1996 SC839, may be referred to. The Supreme Court held as follows:

35-A. We are, however, in the instant case, concerned with the question of protection of "Collector" and, therefore, we are not considering the question of protection of "other officers."

36. Section 1 of the Judicial Officers (Protection) Act, 1950 provides, inter-alia, as under -

1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction. Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of....

37. This section contains the common law rule of immunity of Judges which is based on the principle that a person holding a judicial office should be in a position to discharge his function with complete independence and, that is more important, without there being, in his mind, fear of consequences. The scope and purpose of this Act has already been explained by this Court. In *Anwar Hussain Vs. Ajoy Kumar Mukherjee and Others*, in which the old decision in *Tayen v. Ram Lai* (1890) ILR 12 All. 115 was approved. The position of Judges, Judicial Officers and Magistrates has since been made more secure by the enactment of Judges (Protection) Act, 1950.

41. This section provides complete protection to the Registering Officer for things

done "bonafide" by him under the Act. It is obvious that action which is not bonafide or which is malicious will not be protected.

28. In view of the above decision of the Apex Court, the Collects stands completely immuned from both the civil and criminal liability for any act done in the exercise of statutory powers. In the instant case, for reasons discussed herein before; the Collector is immuned from criminal prosecution initiated by the Respondents the FIRs do not disclose any material to show that the act was not bonafide.

29. There is no dispute that the FIRs can be quashed in exercise of jurisdiction of the High Court under Article 226 of the Constitution when the FIR prima facie discloses no offence. In AIR 1982 SC 349 and various other decisions, this view has been upheld.

30. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, it has been held as follows:

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

The instant case is one where chances of conviction are bleak even if the materials in the FIRs remain uncontroverted. Therefore, the FIRs have to be quashed.

31. In the result, this petition is allowed and the rule issued on 19.5.95 is hereby made absolute. The three FIRs registered against the Collector (Petitioner) are hereby quashed to the extent they relate to him. This order shall, in no way, adversely affect the investigation pending against others.

32. The parties are to bear with their respective costs.