
(2011) 07 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3599 of 2011

P.A.C.L. India Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2), 19(3), 19(4)
Contract Act, 1872 — Section 17
Criminal Procedure Code, 1973 (CrPC) — Section 134, 144, 145, 435, 439
Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 3, 6
Penal Code, 1860 (IPC) — Section 188, 420, 468
Reserve Bank of India Act, 1934 — Section 45I, 58B

Citation : (2011) 5 MPHT 427 : (2011) 3 MPJR 63 : (2012) 1 MPLJ 235

Hon'ble Judges : Sheel Nagu, J; S.K. Gangele, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

The question involved in this petition appears to be simple, that whether the District Magistrate has power and authority to pass an order u/s 144 Code of Criminal Procedure in regard to prohibiting the Petitioner - company to continue its business activities and seizure of office of the Petitioner. After scanning the bulky documents and the facts of the case, we have gathered an impression that the present case is a classic example that by concealing material facts the Petitioner - company wants to get relief on technicalities with intention to carry out illegal activities.

Petitioner is a Public Limited Company incorporated under the provisions of the Companies Act on 13.02.1996. The Company was allotted an industrial activity code 082, which means Real Estate Activity vide a letter dated 06.04.1998 issued by the Department of Company Affairs, Government of India. As per pleadings of the Petitioner it is a leading Real Estate Development Company with

a multi-dimensional portfolio ranging from commercial to retail and residential segments. It also has a Customer Service Centre at 3rd Floor, Pan-Inn Plaza, Shinde Ki Chhawani, Lashkar, Gwalior, M.P. The Petitioner further pleaded that it has developed number of townships and acquired tracks of land all over the country, using funds available with the company from promoters' contribution, inter accrual as well as working capital. The company receives applications from its customers for purchase and / or for development of land. As per the Petitioner each business transaction between the company and customer is an independent agreement for purchase of land which is governed by a contract in writing and the customer pays consideration in full or installments at the time of contract. The company has various types of payment plans, named as "cash down payment plan". The company further gives option to its customers of availing its services to develop the land or to arrange for its disposal in favour of third parties. The Petitioner specifically stated that it does not hold any promise or any assurance of fixed returns to its customers at any stage of transaction.

The Reserve Bank of India had entered into correspondence with the Company for its activities. The Security and Exchange Board of India also enquired about the activities of the Petitioner - company. As per the Petitioner - company, a Public Interest Litigation was filed before the Delhi High Court, which was registered as C.W. No. 3352/1998 in regard to activities of the Petitioner - Company. In the aforesaid litigation, Hon'ble Mr. Justice K. Swamidurai, Retired Judge of the Madras High Court, was appointed by the High Court to verify the genuineness of the agreements of the company in regard to sale of the land and Hon'ble Mr. Justice K. Swamidurai has held that the activities of the company were genuine. On the aforesaid basis another writ petition filed before the Rajasthan High Court was also dismissed.

Police Station Inderganj, Gwalior, issued a notice to the Petitioner's Customer Service Centre at Gwalior and sought certain details from the Company. Thereafter, on 03.09.2010 District Magistrate, Gwalior also issued a notice No. 10373, Annexure P-7 to the Petitioner - Company. The District Magistrate mentioned in the show cause notice that the Petitioner - Company had been receiving deposits from investors with an assurance that they would get 3 to 4 times amount after certain period, hence, the activities of the company were in contravention to the provisions of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000, hereinafter referred to as the "Act of 2000". The District Magistrate further observed that the company had not taken permission from the Reserve Bank of India for the aforesaid purpose. The District Magistrate sought various informations from the Petitioner - company including the details of all deposits received and names of the depositors, details of activities for which deposits had been made from public and whether the money so received from the depositors had been used for sale and purchase of any material, if yes, then what material was purchased at which locations.

The Company in its reply dated 10.09.2010, Annexure P-8, informed the

Collector that it has been engaged in real estate activities of sale and purchase of barren land and was also in the activities of development of agriculture in order to convert barren land in to cultivable land. The Petitioner - company further mentioned the fact that it receives money in anticipation to the agriculture plots sold to the customers as well as to carry out development activities on their behalf. The Petitioner - company did not inform the District Magistrate that how much money it had received from its customers and how much land it had purchased from that money or whether any development activities had been carried out by the Company. On 27.09.2010 an additional reply to the show cause notice was submitted to the District Magistrate by the Company. In the aforesaid reply the same facts have been stated. However, the company - Petitioner tactfully and deliberately avoided to reply the facts in regard to number of depositors / customers and the amount received by the Company till date and the amount invested up to date and details of the sale and purchase of land.

The In-Charge, Police Station Inderganj, Gwalior, further issued a notice to the company - Petitioner in regard to presence at the police station for certain inquiries. Thereafter, another notice was issued to the company - Petitioner on 12.03.2011 by the In-Charge, Police Station, Inderganj, Gwalior. It has been mentioned in the notice that certain inquiries were sought from the company - Petitioner but it did not submit the information. The Company - Petitioner accepted the aforesaid notice and mentioned the same facts as mentioned earlier in reply to earlier letter in regard to sale and purchase and Real Estate Business. However, the Petitioner - company did not mention the real facts.

The District Magistrate passed an order u/s 144 Code of Criminal Procedure on 4th May 2011 prohibiting the business of the Petitioner - company. The District Magistrate further observed that the office of the company - Petitioner did not submit the information as required under the provisions of the Act of 2000 and in preliminary enquiry it has been found that the Petitioner - Company has been accepting deposits from investors on the promise to pay high returns to the investors. The Petitioner - Company has no licence for the banking business, hence, there is a likelihood of breach of peace. The order was valid for a period of two months as per the provisions of Section 144 Code of Criminal Procedure. Thereafter, during pendency of the petition another order has been passed by the District Magistrate dated 1st July 2011, by which order the District Magistrate prohibited the business of the company - Petitioner.

Respondents/State in the return has submitted that before this Court a Public Interest Litigation was filed, which was registered as Writ Petition No. 3332/10 and this Court issued certain directions and thereafter on the basis of the enquiry conducted by the police a show cause notice was issued by the District Magistrate to the Petitioner-Company and after considering the reply and facts of the case, the District Magistrate was of the opinion, that there was a likelihood of breach of peace and there may be a public unrest due to the activities of the

Petitioner - Company, hence, the order was passed. It has further been submitted by the Respondents in the return that a First Information Report has also been lodged at the police station against the Petitioner - Company under Sections 420, 468 IPC and 3/6 of the Act of 2000 and Section 45(I) and 58-B of the Reserve Bank of India Act 1934. The FIR was registered on the basis of a letter received from the office of District Magistrate. The District Magistrate has also seized the properties of the company. It has further been mentioned in the return that the District Magistrate received near about 500 complaints from investors against the Petitioner -company in regard to acceptance of deposits with an assurance to pay high returns. An additional return has also been filed. In the said additional return it has been submitted that as per the information and enquiry conducted by the police, the Petitioner - company purchased some land at village Hathnaura, Tehsil Dabra from villagers. Details of the transactions between the company - Petitioner and the sellers of the land have been mentioned in Annexure RA-I. Copies of the applications submitted by the investors / depositors with the Company - Petitioner have also been filed. An advertisement issued by the Company - Petitioner in a daily news paper. "Nai Duniya" has also been filed as Annexure RA-13.

The Petitioner - Company also filed an application, I.A. No. 3404/11, and also filed another application I.A. No. 3711/11 for taking additional facts and documents on record. These applications have been allowed and the additional return filed by the Respondents / State have been taken on record with the consent of parties.

Along with the application for taking additional facts on record the Petitioner - Company filed a copy of the agreement and certificate issued by the Petitioner - company. Along with another application, I.A. 3711/11, the Petitioner - company, filed a copy of the order passed by the Delhi High Court in C.W.3352/1998, The Petitioner - Company has also filed list as Annexure P-26, which runs from page 11 to 469, near about 458 pages. The names of the persons and the amount paid to each person by way of demand drafts on 06.06.11, 08.06.11 and 13.06.11. As per the Petitioner - Company it issued demand drafts to its customers from 06.06.2011 onwards. At page No. 11, Annexure P-26, names of 41 customers have been mentioned and the amount has also been mentioned which has been paid to the customers through demand drafts. The Petitioner - Company has mentioned the names of near about 1000 persons up to the page No. 31 of Annexure P-26 and thereafter it did not mention the serial number and up to page number 469 the number is in thousands. As per the Petitioner - company, it had paid an amount of Rs. 41,89,38,713.52 to its depositors. The Respondent / State also filed copy of the advertisement published by the Petitioner - Company in a daily news paper, "Nai Duniya" dated 05.07.2011 as Annexure RA-13. As per the aforesaid advertisement issued by the Petitioner - Company, it issued 51000 demand drafts as on Friday 30th June against settlement of claims in Gwalior alone.

Learned Senior Counsel, appearing on behalf of the Petitioner - Company, has contended that order, Annexure P-1, issued by the District Magistrate u/s 144 Code of Criminal Procedure is without jurisdiction, power and authority. The District Magistrate has abused the power conferred on him u/s 144 Code of Criminal Procedure. It has further submitted that the Petitioner - Company has been in real estate business and it has certificate to this effect from the relevant department and the company is not in the business of Non-Banking Finance or is a Finance Company. It has further been stated that the District Magistrate has no power and authority to stop the business of the company. The Delhi High Court after perusal of the report of a retired Judge and after considering the activities of the Petitioner - company has held that the activities of the Petitioner - company are in accordance with law. Same decision has been rendered by the Rajasthan High Court. The learned Senior Counsel further submitted that the second order issued by the District Magistrate u/s 144 Code of Criminal Procedure is an abuse of the power conferred to the District Magistrate u/s 144 Cr. P.C. No second order can be issued by the District Magistrate u/s 144 Code of Criminal Procedure. The learned Senior Counsel further submitted that the Act of 2000 is a Special Act, hence, the District Magistrate has no authority and power to pass an order under the General Act. Because the provisions of the Special Act will prevail over the provisions of the General Act. In support of his contentions, learned Senior Counsel relied on the following judgments:

- (1) Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another,
- (2) Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others,
- (3) Babulal Parate Vs. State of Maharashtra and Others,
- (4) Commissioner of Police, Bombay v. Gordhandas Bhanji AIR (39) 1952 SC 16 and
- (5) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

Contrary to this, learned Additional Advocate General has submitted that the Petitioner - Company has been playing a fraud with general public. Actually, the Petitioner - Company has been receiving deposits from investors with a promise to pay high returns to the investors after some period. For the aforesaid purpose, the Petitioner - company employed number of agents to whom it pays commission. It has further been submitted by the learned Additional Advocate General that in order to hide real activities and intentions of the Petitioner - company, it has purchased certain land in remote areas, which has no value at all. The land has not been developed at all or nor it has been allotted to any customer neither there is any transaction in the name of any customer. The Petitioner - Company deliberately did not disclose the fact that up to now how much amount it has received at district Gwalior or other districts from customers and where it has invested the amount. The Petitioner - company is making

jugglery of facts in order to hide its real intentions which is clear from the facts as day-light and looking to danger of peace of the society and general importance of the matter the District Magistrate has passed order u/s 144 Code of Criminal Procedure The action under the provisions of the Act of 2000 have also been taken against the company and an FIR has also been lodged. Learned Additional Advocate General further submitted that even otherwise if the order of District Magistrate is without authority then also the order cannot be quashed because it would amount grant of permission to the Petitioner - company to carry out illegal activities, which is against the basic proposition of grant of equitable relief under Article 226 of the Constitution. In support of his contentions learned Additional Advocate General has relied on the following judgments:

(1) Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another,

(2) K.D. Sharma Vs. Steel Authority of India Ltd. and Others,

In our opinion, before deciding the question in regard to illegality of the impugned order dated 04.05.2011 and subsequent order dated 1st July 2011 passed by District Magistrate u/s 144 Cr. P.C., it would be just and proper to decide that whether the Petitioner - Company has come up with clean hands or stated true facts before this Court, which is a necessary ingredient in order to grant relief under equitable jurisdiction of this Court.

Hon"ble the Supreme Court in case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, , has held, as under, in regard to necessity to put forward all the facts before the Court by a Petitioner, who is seeking an extra ordinary, equitable, discretionary, prerogative writ in his favour:

The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the Petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the Petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs (1917) 1 KB 486: 86 LJKB 257: 116 LT 136 (CA), in the following words: (KB p. 514)

... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it -the court is supposed to know the law. But it knows nothing about

the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.

(emphasis supplied)

A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

In *Kensington Income Tax Commrs.* (supra) Viscount Reading, C.J. observed: (KB pp. 495-96) "... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

(emphasis supplied)

The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The Petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

If the primary object as highlighted in Kensington Income Tax Commrs. (supra) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

Let us consider some important decisions on the point.

In State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another, almost an agreed order was passed by the Court that on expiry of the licence for manufacturing of liquor on 6-9-1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-1977, and the Court granted stay of dispossession. In appeal, the Supreme Court set aside the order granting stay of dispossession on the ground that the Petitioner Company in filing the petition in the High Court had misled it and started the proceedings for oblique and ulterior motive.

In Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, , it was the case of the Petitioners that the provisional admissions granted to them were not cancelled and they were continuing their studies as postgraduate students in Medical College on the relevant date. On the basis of that statement, they obtained an order of status quo. The Supreme Court ordered inquiry and the District Judge was asked to submit his report whether the provisional admissions granted to the Petitioners were continued till 1-10-1982 or were cancelled. The report revealed that to the knowledge of the Petitioners their provisional admissions were cancelled long before 1-10-1982 and thus, the Petitioners had made false representation to the Court and obtained a favourable order. Dismissing the petition, this Court observed: (SCC p. 334, para 1)

1.... But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the special leave petitions are liable to be dismissed.

Deprecating the reprehensible conduct of the Petitioners as well as of their counsel, the Court stated: (Vijay Kumar Kathuria case (supra) SCC pp. 334-35, para 3)

3. Before parting with the case, however, we cannot help observing that the

conduct or behaviour of the two Petitioners as well as their counsel (Dr. A.K. Kapoor who happens to be a medico-legal consultant practising in courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two Petitioners and their counsel (who also gave evidence in support of the Petitioner's case before the District Judge) have indulged in telling lies and making reckless allegations of fabrication and manipulation of records against the college authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their careers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the Bar Council for appropriate action but we refrained from doing so as the Petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the court. We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour...

(emphasis supplied)

In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, certain hoteliers filed a petition in this Court under Article 32 of the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained ex parte stay order. The price, however, was fixed as per the agreement between the Petitioners and the Government but the said fact was suppressed. Describing the fact as material, the Court said: (SCC pp. 580-81, para 7)

7.... Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court.

In *Agricultural and Processed Food Products Vs. Oswal Agro Furane Ltd. and others*, the Petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the Petitioner was guilty of suppression of "very important fact", this Court set aside the order of the High Court.

In *State of Punjab and Others Vs. Sarav Preet and Others*, A obtained relief from the High Court on her assertion that a test in a particular subject was not conducted by the State. In an appeal by the State, it was stated that not only the requisite test was conducted but the Petitioner appeared in the said test and failed. Observing that the Petitioner was under an obligation to disclose the said fact before the High Court, this Court dismissed the petition.

In *Union of India v. Muneesh Sunejam* (2001) 3 SC Cn 92: 2001 SCC (Cri) 433, the detenu challenged an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by filing a petition in the High Court of Delhi which was withdrawn. Then he filed a similar petition in the High Court of Punjab and Haryana wherein he did not disclose the

fact as to filing of the earlier petition and withdrawal thereof and obtained relief. In an appeal by the Union of India against the order of the High Court, this Court observed that non-disclosure of the fact of filing a similar petition and withdrawal thereof was indeed fatal to the subsequent petition.

A special reference may be made to a decision of this Court in All India State Bank Officers Federation and Others Vs. Union of India (UOI) and Others, , In that case, promotion policy of the Bank was challenged by the Federation by filing a petition in this Court under Article 32 of the Constitution. It was supported by an affidavit and the contents were affirmed by the President of the Federation to be true to his "personal knowledge". It was stated: (SCC p. 337, para 2)

2.... The Petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court.

In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was "false". The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that the promotion policy was implemented and 58 officers were promoted who were not made parties to the petition. In the affidavit-in-rejoinder, once again, the stand taken by the Petitioner was sought to be justified. It was stated: "The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Secondly, the Petitioners even today do not know the names of all such 58 candidates who have been promoted/favoured." It was contended on behalf of the Bank that even that statement was false. Not only the Petitioner Federation was aware of the names of all the 58 officers who had been promoted to the higher post, but they had been joined as party-Respondents in the writ petition filed in the Karnataka High Court, seeking stay of promotion of those Respondents. It was, therefore, submitted that the Petitioner had not come with clean hands and the petition should be dismissed on that ground alone.

"Strongly disapproving" the explanation put forth by the Petitioner and describing the tactics adopted by the Federation as "abuse of process of court", this Court observed: (All India State Bank Officers Federation case, (supra), SCC pp. 340-41, paras 9 & 11)

9....There is no doubt left in our minds that the Petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process....

Apart from misstatements in the affidavits filed before this Court, the Petitioner Federation has clearly resorted to tactics which can only be described as abuse of

the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one.

(emphasis supplied)

"Deeply grieved" by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a premier bank of the country, the Court observed: (All India State Bank Officers Federation case (supra) SCC p. 342, para 12)

12. We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the Petitioners in this case and hope that this will be a lesson to the present Petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.

(emphasis supplied)

Yet in another case in *Vijay Syal and Another Vs. State of Punjab and Others*, , this Court stated: (SCC p. 420, para 24)

24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of

justice.

Hon"ble the Supreme Court further in the case of Prestige Lights Ltd. Vs. State Bank of India, , has held, as under:

It is thus clear that though the Appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R. v. Kensington Income Tax Commrs. (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words:

[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, not law. He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.

(emphasis supplied)

It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

Hon"ble the Supreme Court in the case of K.D. Sharma (supra) in paras 26 and 27 after quoting its earlier judgments has observed, as under, in regard to practice of

fraud:

It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every court.

Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Govt. of A.P. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

From the aforesaid decisions of the Hon"ble Supreme Court and the decision reported in the case of Vijay Syal and Another Vs. State of Punjab and Others, , it is clear that if any party attempts to make misrepresentation in concealing material facts, it does so at his risk and costs. Such party must be ready to face consequences that follow on account of its own doing. The Hon"ble Supreme Court further observed that there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice. There are other judgments also on this point, but, we are not quoting the aforesaid judgments because in the aforesaid judgment Hon"ble the Supreme Court has discussed all its previous judgments effect of fraud as proclaimed by Chief Justice Edward Coke of England about three centuries before that "fraud avoids all judicial acts, ecclesiastical or temporal".

We will consider later that whether the Petitioner played any fraud or not ? But, here we would like to consider that whether the Petitioner - company has placed all the material facts before the Court or before the Authority or not ?

As per the pleadings of the Petitioner, it has been engaged in the business of sale and purchase of land and its development by entering into agreements with customers. The Petitioner - Company has also been allotted the Industrial Activity Code 082 looking to its Real Estate Activities by the Department of Company Affairs. As per the Petitioner - Company it is a leading Real Estate Company all over India and holds large tracks of land in different locations all over country. The company has filed a copy of the agreement as Annexure P-22,

named as "PLOT REGN. No. " There is an "Application Form" and the model agreement containing provisions in regard to "sale of plots", "Preliminary work" and "consideration". The relevant provisions are as under:

SALE OF PLOTS

In the case of Cash Down Payment Plan CDPP & Cash Down flexi Payment Plan (CDPP Flexi) the land shall be allotted in the name of Customer after receipt of full consideration amount with a period of 270 days and in case of installment Payment Plans, after having receipt of 50 % of the consideration amount of the plot and charges within the period of 270 days. Subject to foregoing, the land ownership along with its possession will ordinarily be transferred by the Company in the name of Customer by means of registered sale deed within a reasonable period after allotment.

PRELIMINARY WORK

THE COMPANY or its nominee shall procure and install bore wells, open wells and other water points and install motors, pumps sets, irrigation and main pipelines, electrical installations and temporary sheds / structures, subject to the terms and conditions laid down elsewhere in this Agreement.

DEVELOPMENT OF LAND

The Customer has exercised the option to get the Plot developed by the Company and this Agreement shall be constructed as a confirmation thereof.

CONSIDERATION

The CUSTOMER shall pay, in aggregate, a sum of Rs..... Rupees..... Only) as per payment schedule of Plan opted for by the CUSTOMER, towards consideration for the purchase and development of the plot by THE COMPANY, and for such other allied expenses as may be allocable, apportionable, or appropriable to the plot.

This model agreement shows basic concept of business of the Petitioner - company. Along with this a document has also been filed as Annexure P-23 as "REGISTRATION LETTER" and the certificate. It has been mentioned in the aforesaid document, "Payment Plan No. & Term", "Plot's size", "Mode of payment" and "Periodicity of installment". From the model agreement it is clear that the company has been receiving deposits from the customers on monthly basis also. The Petitioner - company has further filed another copy of broacher, Annexure P-24, named as "Pearls Business Plans". In the aforesaid business plan, the total amount which has to be deposited for different plot size of different durations has also been mentioned. It is as under:

Plot Developed Under Plan Numbers

Company's estimate of the approximate value likely to be acquired by the plot after Development at the end of the agreement term.

For Plot Size 150 Sq. Yds.

For Plot Size 200 Sq. Yds.

1-1 (66 MONTHS)

10910/

14547/

1-2 (72 MONTHS)

11550/

15400/

1-3 (84 MONTHS)

12390/

16520/-

C-1 (63 MONTHS)

13935/

18580/-

C-2 (75 MONTHS)

15675/

20900/-

C-3 (84 MONTHS)

17105/

22807/-

C-4 (120 MONTHS)

27800/

37067/

As per the Petitioner - Company it has been working under the aforesaid parameters, but, the facts gathered by the police authorities and District Magistrate and suppressed by the Petitioner - company, states a quite different story, which is astonishing and shows real intentions of the Petitioner - company. The Petitioner - company has filed the list of customers, demand draft number and the amount which has been paid to each customer from 06.06.2011 onwards. It runs in to 448 pages and the total amount as per the Petitioner - company it refunded to its customers comes to Rs. 41,89,38,713.52. It is not necessary to burden this judgment by giving all the details. The advertisement issued by the Petitioner - company has been filed along with the return as

Annexure RA-13 dated 05.07.2011 mentions the fact that the Petitioner - Company issued 51,000 demand drafts as on Friday 30th June for settlement of claims in Gwalior alone. However, the Petitioner - Company has not mentioned a single fact that how much land it has purchased up to now from the amount received from various customers and whether at any place the Petitioner - company purchased any land in the name of the company. This is the vital information which is, in our opinion, necessary to substantiate the claim of the Petitioner - Company to the effect that it is in the business of development of Real Estate and it has been developing the land purchased on behalf of the customers and thereafter it has been selling the same in order to provide benefits to the customers. The Respondent, District Magistrate, repeatedly asked, which is clear from notice dated 03.09.2010, that how much amount the Petitioner - company had collected from the customers and where it invested the amount and how much land the Petitioner - company purchased from the amount. Another show cause notice, Annexure P-10, was issued to the Petitioner, by which the In Charge, Police Station, Inderganj, Gwalior, directed the Petitioner - company to furnish certain information. The Petitioner - company filed the reply, but, avoided the enquiry. Thereafter, on 04.06.2011 the In Charge, Police Station, Inderganj, again directed the Petitioner - Company to furnish the information, which has not been provided by the Petitioner - company. The vital information has not been furnished by the Petitioner - Company to the police authorities or before this Court in regard to the fact that how much money it had collected from the customers at various districts of Gwalior division and other divisions or Gwalior district alone and how much land it has purchased from the aforesaid money. The Petitioner - Company has mentioned in the advertisement that it had issued demand drafts in favour of 51000 persons on Friday 30th June against settlement of claims in Gwalior alone. It had filed a list of persons to whom it had issued demand drafts and the amount mentioned in each demand draft and the name of persons. The list runs in 448 pages and it has also been stated that it had paid near about Rs. 41,89,38,713.52 to the customers. However, the Petitioner did not disclose or filed a solitary fact that where it invested the amount collected from the customers. It has also not submitted any detail that how much amount it has collected from the customers. This concealment of facts clearly shows that the Petitioner - company has been receiving deposits from the customers and it has invested the amount in certain activities, which is in the best knowledge of the Petitioner - company and that has been deliberately concealed from this Court or from the District Administration and police authorities in order to hide the illegal activities of the Petitioner - Company. The Respondents along with the return have submitted that as per the information they have gathered, the Petitioner - company purchased some land at village Hathnaura and village Kaimari. The total amount which is paid by the Petitioner - company as consideration to this effect, comes to Rs. 1,08,39,500/-. This amount and the amount invested by the Petitioner-company is a drop in ocean in comparison to the amount collected by the Petitioner-company from the investors and even though the Petitioner -company

has not disclosed the total amount collected by it from the investors if the documents filed by the Petitioner - company be taken into consideration yet it appears that it had collected more than Rupees One Hundred Crores or more from Gwalior District alone because as per the Petitioner - company it had paid the aforesaid amount to the investors. The question is that where did the company invest the said amount as per the agreement which has been claimed by the Petitioner - company in the petition and why all of sudden the Petitioner - company made payments to the customers. It appears that after entertaining the, P.I.L. writ petition and registration of criminal cases against the Petitioner - company in order to avoid revealing its real intention the Petitioner - company has made payments to the customers. The naked truth, which comes from the aforesaid facts, is that the Petitioner - Company has been accepting the deposits from the customers with a promise to pay a large return to the customers. The Scheme which is on papers of the Company is the scheme of receiving fixed deposits from the investors. It is a serious matter. In our opinion, it would be deterrent or dangerous to the national economy. It is in flagrant or naked violation of laws. The Petitioner - Company has made jugglery of facts in order to hide its real business. We are making these observations on the basis of facts of the case and are astonished to know that such type of fraudulent activities have been going on in this nation by such type of companies, which are claiming to be one of the leading real estate developers of the nation. We have no data or details that how much amount the Petitioner - company has collected all over the country and where it has invested. We have also ordered a C.B.I. enquiry in a Public Interest Litigation, Writ Petition No. 3332/2010(PIL) on 05.07.2011, after observing the aforesaid facts. But, prima facie, we are convinced that the Petitioner - company is in the business of accepting deposits from the investors, it may be using the amount in real estate business and various activities, but, it has not been doing its business as shown by the Petitioner - company on papers.

Hon"ble the Supreme Court in the case of Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another, has held, as under, in regard to fraud:

It is well known that fraud cannot be put in a straitjacket and it has a very wide connotation in legal parlance. In the decision of the House of Lords in Reddaway (Frank) and Co. Ltd. v. George Banham and Co. Ltd. 1896 AAC 199 : (1895) All ER Rep 133 (HL) Lord Macnaghten explained the multifarious aspects of fraud very lucidly, and which we quote:

But fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.

(AC at p. 221 of the Report)

The aforesaid elucidation by the learned Law Lord has also been accepted in the celebrated treatise on fraud (see Kerr on Fraud and Mistake, 7th Edn., p. 1). Kerr has also referred to Story's Equity Jurisprudence and defined "fraud" as:

Fraud, in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another.

In Indian law, namely, the Contract Act, the said common law doctrine of fraud has been assimilated in Section 17 of the said Act. A very wide definition of "fraud" has been given, which is as under:

"Fraud" defined.-"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

From the aforesaid discussion, in our opinion, the Petitioner - company has not placed all the facts before the Court rather it has concealed material facts in order to camouflage its activities. Prima facie, we are of the opinion, that the Petitioner - company has played fraud with the Court, hence, the Petitioner - company is not entitled any relief under Article 226 of the Constitution, which is a discretionary and equitable relief.

In regard to merits of the case, the District Magistrate has passed the order dated 4th May 2011 u/s 144 of the Code of Criminal Procedure and before passing the aforesaid order, a show cause notice was issued to the Petitioner - company, copy of which has been filed as Annexure P-7. The Petitioner was directed to inform its activities in regard to the facts that how much amount it had collected from the investors and where it had invested the aforesaid amount. The Petitioner did not furnish the details to this effect. Again, another show cause notice was issued to the Petitioner-company by In Charge, Police Station,

Inderganj, Gwalior, Annexure P-10, asking the same details. The Petitioner did not furnish the details. Another notice was also issued to the Petitioner - company. Thereafter, the District Magistrate passed the order dated 4th May 2011, Annexure P-1.

The Constitution Bench of the Hon^{ble} Supreme Court in its judgment in the case of Babulal Parate Vs. State of Maharashtra and Others, , has considered the provisions of Section 144 Cr. P. C. and duty of the District Magistrate and held as under:

We think it desirable to reproduce the whole of S. 144.

"(1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-Divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the "State Government"" or the Chief Presidency Magistrate or the District Magistrate to act under his section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by S. 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, ex parte.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reason for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the " State Government", notification in the official Gazette, otherwise directs".

Sub-section (1) confers powers not on the executive but on certain Magistrates. This provision has been amended in some States, as for instance, the former

Bombay State where power has been conferred on the Commissioner of Police to pass an order thereunder. But we are not concerned with that matter here because that provision is not contained in the law as applicable to the former State of Madhya Pradesh, with which alone we are concerned, in the matter before us. Under Sub-section (1) the Magistrate himself has to form an opinion that there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable. Again the Sub-section requires the Magistrate to make an order in writing and state therein the material facts by reason of which he is making the order thereunder. The Sub-section further enumerates the particular activities with regard to which the Magistrate is entitled to place restraints.

Sub-section (2) requires the Magistrate ordinarily to serve a notice on the person against whom the order is directed and empowers him to proceed *ex parte* only where the circumstances do not admit of serving such a notice in due time.

Sub-section (3) does not require any comment.

Sub-section (4) enables a Magistrate to rescind or alter an order made under this section and thus enables the person affected, if the order is addressed to a specified individual, or any member of the public, if the order is addressed to the public in general, to seek, by making an application, exemption from compliance with the order or to seek a modification of the order and thus gives him an opportunity to satisfy the Magistrate about his grievances. The Magistrate has to deal with applications of this kind judicially because he is required by Sub-section (5) to state his reasons for rejecting, wholly or in part, the application made to him.

Finally the normal maximum duration of the order is two months from the date of its making. The restraints imposed by the order are thus intended to be of a temporary nature.

Looking at the section as a whole it would be clear that, broadly speaking, it is intended to be availed of for preventing disorders, obstructions and annoyances and is intended to secure the public weal. The powers are exercisable by responsible magistrates and these magistrates have to act judicially. Moreover, the restraints permissible under the provision are of a temporary nature and can only be imposed in an emergency.

Even so, according to the learned Counsel these provisions place unreasonable restrictions on certain fundamental rights of citizens.

Firstly, according to learned Counsel restrictions on the rights guaranteed by cls. (2) and (3) of Article 19 of the Constitution can be placed in the interest of "public order" and not in the interest of the "general public", which expression, according to him is wider in its ambit than public order and that since S. 144 enables a magistrate to pass an order in the interest of the general public the restrictions it authorities are beyond those permissible under cls. (2) and (3) of

Article 19. It is significant to note that S. 144 nowhere uses the expression "general public". Some of the objects for securing which an order thereunder can be passed are, "to prevent obstruction, annoyance, injury....." etc. No doubt, the prevention of such activities would be in the "public interest" but it would be no less in the interest of maintenance of "public order".

Secondly according to learned Counsel, Section 144 is an amalgam of a number of things to many of which there is no reference even in cl. (2) of Article 19. In order to enable the State to avail of the provisions of cls. (2) and (3), he contends, a special law has to be passed and a provision like S. 144 can serve no purpose. This contention has only to be mentioned to be rejected. Clauses (2) to (6) of Article 19 do not require the making of a law solely for the purpose of placing the restrictions mentioned in them.

Thirdly, according to learned Counsel Sub-section (1) of S. 144 does not require the magistrate to make an enquiry as to the circumstances which necessitate the making of an order thereunder. It is true that there is no express mention anywhere in S. 144 that the order of the magistrate should be proceeded by an enquiry. But we must construe the section as a whole. The latter part of Sub-section (1) of S. 144 specifically mentions that the order of the magistrate should set out the material facts of the case. It would not be possible for the magistrate to set out the facts unless he makes an enquiry or unless he is satisfied about the facts from personal knowledge or on a report made to him which he prima facie accepts as correct. Clearly, therefore, the section does not confer an arbitrary power on the magistrate in the matter of making an order.

It is contended that S. 144 of the Code of Criminal Procedure confers very wide powers upon certain magistrates and that in exercise of those powers the Magistrates can place very severe restrictions upon the rights of citizens to freedom of speech and expression and to assemble peaceably and without arms.

It seems to us, however, that wide though the power appears to be, it can be exercised only in an emergency and for the purpose of preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity or a riot, or "an affray". These factors condition the exercise of the power and it would consequently be wrong to regard that power as being unlimited or untrammelled. Further, it should be borne in mind that no one has a right to cause "obstruction, annoyance or injury etc.," to anyone. Since the judgment has to be of a magistrate as to whether in the particular circumstances of a case an order, in exercise of these powers, should be made or not, we are entitled to assume that the powers will be exercised legitimately and honestly. The section cannot be struck down on the ground that the magistrate may possibly abuse his powers.

It is also true that initially it is the magistrate concerned who has to form an opinion as to the necessity of making an order. The question, therefore, is whether the conferral of such wide power amounts to an infringement of the

rights guaranteed under Article 19(1)(a) and (b) of the Constitution. The rights guaranteed by Sub-clause (a) are not absolute rights but are subject to limitations specified in cl.(2) of Article 19 which runs thus:

"Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Similarly the rights to which Sub-clause (b) relates are subject to the limitations to be found in cl. (3) of Article 19, which runs thus:

"Nothing in Sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

The Code of Criminal Procedure was an existing law at the commencement of the Constitution and so, in the context of the grounds on which its validity is challenged before us, what we have to ascertain is whether the conferral thereunder of a power on a magistrate to place restrictions on the rights to which Sub-clauses (a) and (b) of Article 19 relate is reasonable. It must be borne in mind that the provisions of Section 144 are attracted only in an emergency. Thereunder the initial judge of the emergency is, no doubt, the District Magistrate or the Chief Presidency Magistrate or the sub-divisional magistrate or any other magistrate specially empowered by the State Government. But then, the maintenance of law and order being the duty and function of the executive department of the State it is inevitable that the question of formation of the opinion as to whether there is an emergency or not must necessarily rest, in the first instance, with those persons through whom the executive exercises its functions and discharges its duties. It would be impracticable and even impossible to expect the State Government itself to exercise those duties and functions in each and every case. The provisions of the section therefore which commit the power in this regard to a magistrate belonging to any of the classes referred to therein cannot be regarded as unreasonable. We may also point out that the satisfaction of the magistrate as to the necessity of promulgating an order u/s 144 of the Code of Criminal Procedure is not made entirely subjective by the section. We may also mention that though in an appropriate case a magistrate is empowered to make an order under this section ex parte the law requires that he should, where possible serve a notice on the person or persons against whom the order is directed before passing that order. The Sub-section (4) provides that any magistrate may either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section. This clearly shows that even where an ex parte order is made the person or persons affected thereby have a right to challenge the order of the magistrate.

Sub-section (5) provides that where such a challenge is made, the magistrate shall give an early opportunity to the person concerned of appearing before him and showing cause against the order. The decision of the magistrate in such a proceeding would undoubtedly be a judicial one inasmuch as it will have been arrived at after hearing the party affected by the order. Since the proceeding before the magistrate would be a judicial one, he will have to set aside the order unless he comes to the conclusion that the grounds on which it rests are in law sufficient to warrant it. Further, since the propriety of the order is open to challenge it cannot be said that by reason of the wide amplitude of the power which S. 144 confers on certain magistrates it places unreasonable restrictions on certain fundamental rights.

Learned Counsel, however, says that the right conferred on the aggrieved person to challenge the order of the magistrate is illusory as he would be a judge with regard to his own decision. This argument would equally apply to an application for review made in a civil proceeding and we do not think that it is at all a good one. Again, though no appeal has been provided in the Code against the magistrate's order u/s 144, the High Court has power u/s 435 read with Section 439 of the Code to entertain an application for the revision of such an order. The powers of the High Court in dealing with a revision application are wide enough to enable it to quash an order which cannot be supported by the materials upon which it is supposed to be based. We may point out that Sub-section (1) of S. 144 requires a magistrate who makes an order thereunder to state therein the material facts upon which it is based and thus the High Court will have before it relevant material and would be in a position to consider for itself whether that material is adequate or not. As an instance of a case where the High Court interfered with an order of this kind, we may refer to a decision in *Editor, Tribune v. Emperor*, AIR 1942 Lah 171 (FB). There, the learned judges quite correctly pointed out that the propriety of the order as well as its legality can be considered by the High Court in revision, though in examining the propriety of the order the High Court will give due weight to the opinion of the District Magistrate who is the man on the spot and responsible for the maintenance of public peace in the district. In that case the learned judges set aside an order of the District Magistrate upon the ground that there was no connection between the act prohibited and the danger apprehended to prevent which the order was passed. We would also like to point out that the penalty for infringing an order u/s 144 is that provided in S. 188, Indian Penal Code. When, therefore, a prosecution is launched thereunder, the validity of the order u/s 144, Code of Criminal Procedure could be challenged. We are, therefore, unable to accept Mr. Mani's contention that the remedy of judicial review is illusory.

The argument that the test of determining criminality in advance is unreasonable, is apparently founded upon the doctrine adumbrated in *Schenck v. United States* (1919) 249 U. S. 47 that previous restraints on the exercise of fundamental rights are permissible only if there be a clear and present danger. It seems to us, however, that the American doctrine cannot be imported under our

Constitution because the fundamental rights guaranteed under Article 19(1) of the Constitution are not absolute rights but, as pointed out in *State of Madras Vs. V.G. Row*, are subject to the restrictions placed in the subsequent clauses of Article 19. There is nothing in the American Constitution corresponding to cls. (2) to (6) of Article 19 of our Constitution. The Fourteenth Amendment to the U. S. Constitution provides, among other things, that

"no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;...."

The framework of our Constitution is different from that of the Constitution of the United States. Then again, the Supreme Court of the United States has held that the privileges and immunities conferred by the Constitution are subject to social control by resort to the doctrine of police power. It is in the light of this background that the test laid down in *Schenck's case*, (1919) 249 US 47 has to be understood.

The language of S. 144 is somewhat different. The test laid down in the section is not merely "likelihood" or "tendency". The section says that the magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.

Apart from this it is worthy of note that in *Schenck's case* (1919) 249 US 47, the Supreme Court was concerned with the right of freedom of speech and it observed:

"It well may be that the prohibition of law abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose..... We admit that in many places and in ordinary times the Defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done..... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force..... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

Whatever may be the position in the United States it seems to us clear that anticipatory action of the kind permissible u/s 144 is not impermissible under cls. (2) and (3) of Article 19. Both in Clause (2) (as amended in 1951) and in Clause (3), power is given to the legislature to make laws placing reasonable restriction on the exercise of the rights conferred by these clauses in the interest, among

other things, of public order. Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order. We must, therefore, reject the contention.

It is no doubt true that since the duty to maintain law and order is cast upon the Magistrate, he must perform that duty and not shirk it by prohibiting or restricting the normal activities of the citizen. But it is difficult to say that an anticipatory action taken by such an authority, in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order. In such circumstances that could be the only mode of discharging the duty. We, therefore, reject the contention that S. 144 substitutes suppression of lawful activity or right for the duty of public authorities to maintain order.

Subsequently, also Seven Judges Bench of the Hon''ble Supreme Court has again considered the provisions of Section 144 Cr. P. C. and scope of Section 144 Cr. P.C. in the case of Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, , and has held as under:

We first take up for consideration S. 144 of the Code. It finds place in Chapter XI which contains one section only. It is headed "Temporary Orders in urgent cases of nuisance or apprehended damage". The section confers powers to issue an order absolute at once in urgent cases of nuisance or apprehended danger. Such orders may be made by specified classes of Magistrates when in their opinion there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable. It requires the Magistrate to issue his order in writing setting forth the material facts of the case and the order is to be served in the manner provided by Section 134 of the Code. The order may direct:

- (A) Any person to abstain from a certain act, or
- (B) to take certain order with certain property in his possession or under his management. The grounds for making the order are that in the opinion of the Magistrate such direction
 - (a) is likely to prevent, or
 - (b) tends to prevent.
- (i) obstruction (ii) annoyance or (iii) injury, to any person lawfully employed or (iv) danger to human life, health or safety or (v) a disturbance of the public tranquillity or (vi) a riot or (vii) an affray.

Stated briefly the section provides for the making of an order which is either prohibitory (A) or mandatory (B) as shown above. Its efficacy is that (a) it is likely to prevent or (b) it tends to prevent, some undesirable happenings. The gist of these happenings are

- (i) obstruction, annoyance or injury to any person lawfully employed; or
- (ii) danger to human life, health or safety; or
- (iii) a disturbance of the public tranquillity or a riot or an affray.

The procedure to be followed is next stated. Under Sub-section (2) if time does not permit or the order cannot be served, it can be made *ex parte*. Under Sub-section (3) the order may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. Under Sub-section (4) the magistrate may either *suo motu* or on an application by an aggrieved person, rescind or alter the order whether his own or by, a magistrate subordinate to him or made by his predecessor in office. Under subs. (5) where the Magistrate is moved by a person aggrieved he must hear him so that he may show cause against the order and if the Magistrate rejects wholly or in part the application, he must record his reasons in writing. This Sub-section is mandatory. An order by the Magistrate does not remain in force after two months from the making thereof but the State Government may, however, extend the period by a notification in the Gazette but, only in cases of danger to human life, health or safety or where there is a likelihood of a riot or an affray. But the second portion of the Sub-section was declared violative of Article 19 in *State of Bihar Vs. Kamla Kant Misra and Others*, . It may be pointed out here that disobedience of an order lawfully promulgated is made an offence by S. 188 of the Indian Penal Code, if such disobedience causes obstruction annoyance or injury to persons lawfully employed. It is punishable with simple imprisonment for one month or fine of Rs. 200/-or both.

The gist of action u/s 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even *ex parte* it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order u/s 144, Code of Criminal Procedure cannot be passed without taking evidence: see *Mst. Jagrupa Kumari v. Chotay Narain Singh* (1936) 37 Cri LJ 95 (Pat) which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the Section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The Section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If

that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

The criticism, however, is that the Section suffers from over broadness and the words of the section are wide enough to give an absolute power which may be exercised in an unjustifiable case and then there would be no remedy except to ask the Magistrate to cancel the order which he may not do. Revision against his determination to the High Court may prove illusory because before the High Court can intervene the mischief will be done. Therefore, it is submitted that an inquiry should precede the making of the order. In other words, the burden should not be placed upon the person affected to clear his position. Further the order may be so general as to affect not only a particular party but persons who are innocent, as for example when there is an order banning meetings, processions, playing of music etc.

The effect of the order being in the interest of public order and the interests of the general public, occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear. As was pointed out in *Babulal Parate Vs. State of Maharashtra and Others*, where two rival trade unions clashed and it was difficult to say whether a person belonged to one of the unions or to the general public, an order restricting the activities of the general public in the particular area was justified.

It may be pointed out that mere disobedience of the order is not enough to constitute an offence. There must be in addition obstruction, annoyance, or danger to human life, health or safety or a riot or an affray before the offence u/s 188, Indian Penal Code is constituted. Thus the person affected has several remedies. He can ask the order to be vacated as against him, he can file a revision and even a petition for a writ. But no person can ask to be considered free to do what he likes when there are grounds for thinking that his conduct would be of the kind described in the section for purposes of preventive action. Ordinarily the order would be directed against a person found acting or likely to act in a particular way. A general order may be necessary when the number of persons is so large that distinction between them and the general public cannot be made without the risks mentioned in the section. A general order is thus justified but if the action is too general the order may be questioned by appropriate remedies for which there is ample provision in the law.

All these matters were considered also by this Court in *Babulal Parate Vs. State of Maharashtra and Others*, In that case the Court emphasised that the restraint is temporary, the power is exercised by senior Magistrates who have to set down the material facts, in other words, to make an inquiry in the exercise of judicial power with reasons for the order, with an opportunity to an aggrieved person to have it rescinded either by the Magistrate or the superior Courts. We have reconsidered all these matters and are satisfied that there are sufficient

safeguards available to person affected by the order and the restrictions therefore are reasonable. We are of opinion that S. 144 is not unconstitutional if properly applied and the fact that it may be abused is no ground for striking it down. We remedy then is to question the exercise of power as being outside the grant of the law.

We need not to burden ourselves to quote further other judgments of the Hon''ble Supreme Court on Section 144 Cr. P. C. because the judgments passed by the Hon''ble Supreme Court in Seven Judges Bench, is still an authority. The Hon''ble Supreme Court has held that "Key-note of exercise of power is to freeing society from menace of serious disturbances of a grave character and this section is directed against those who attempt to prevent the exercise of legal rights by other or imperil the public safety and health and if that be so, the matter must fall within the restrictions provided by the Constitution itself as permissible for the public order."

In the present case, as we have discussed earlier, that by playing fraud the Petitioner - company had been accepting deposits from general public. Admittedly, it had no licence or necessary sanction from the Reserve Bank of India, SEBI or other financial body or it had also not followed the mandatory provisions of the Act of 2000. The Petitioner - company itself stated that on a single day at Gwalior it returned the money of near about 51000 depositors. It has also filed a list of depositors, which runs into 443 pages. The number of depositors we have not calculated, but, may be 50,000 and it returned the money of near about 45 crore. Hence, the situation was certainly grave in nature and prima facie we are of the opinion that the Petitioner - company had been doing this work illegally. The real number of investors have not been disclosed by the Petitioner - company in this petition or to District Magistrate or to police. This Court has also passed an interim order in the Public Interest Litigation and the Petitioners were permitted to inspect the record of the Company, in spite of that the Petitioner did not submit the information, hence, it can safely be held that the activities of the Petitioner - company would have created serious disturbances of grave character in the society. It is clearly stated that on real apprehension or real danger provisions of Section 144 Cr. P. C. can be applied with. Hence, in such circumstances, in our opinion, there is no illegality or irregularity in passing the order dated 4th May 2011, Annexure P-1 by the District Magistrate.

Learned Senior Counsel appearing for the Petitioner - company, has argued that the order has been passed without affording proper opportunity of hearing to the Petitioner, without conducting any enquiry and without taking into consideration the facts of the case and the District Magistrate has mechanically passed the order clubbing the Petitioner - company and other companies together. We are not in agreement with the arguments advanced by the learned Senior Counsel. As stated in the order earlier, the notices were issued by the District Magistrate and also by the Station House Officer, Police Station Inderganj, Gwalior to the

Petitioner - company and the Petitioner - company was asked to furnish information and details in spite of that the Petitioner - company has not furnished the same and up to now the vital details have not been furnished by the Petitioner - company. Hence, the arguments advanced by the learned Senior Counsel are not acceptable.

Another argument advanced by the learned Senior Counsel that the Delhi High Court and Rajasthan High Court have accepted the submissions of the Petitioner - company, hence, the Petitioner - company's activities are valid and are in accordance with law. The orders passed by the Delhi High Court and the Rajasthan High Court are on different sets of facts. We have analyzed the facts of the present case and held that the Petitioner - Company has suppressed the vital facts and did not purchase the land from the amount received from various investors. In such circumstances, the decisions rendered by the other High Courts are not binding on us.

Hon"ble the Supreme Court in the case of Sushil Suri Vs. C.B.I. and Another, , has held, as under, about precedents -ratio decidendi:

It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . In this regard, the following words of Lord Denning, quoted in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, are also quite apt: (SCC p 509, para 22)

22.... "Each case depends on its own facts and a close similarity significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

The learned Senior Counsel further argued that the entire record be called for. However, the Respondents have produced along with the return sufficient material. Hence, in our opinion, it is not necessary to call any other record.

In regard to the submissions made by the learned Senior Counsel that in passing second order dated 1st July 2011 by the District Magistrate u/s 144 Cr. P. C. the District Magistrate in the aforesaid order has mentioned that he had received number of complaints against the Petitioner - company and learned Additional Advocate General informed that near about 550 complaints have been received by the District Magistrate against the Petitioner - Company. The District Magistrate further observed that continuation of the activities of the Petitioner - company would be harmful to the peace of the area, hence, the second order has been passed by him. It is an admitted fact,that the State Government has not

accorded approval to the District Magistrate for extending the period of the order passed earlier. No material has been placed by the State in this regard before this Court that why the State has not accepted the request of the District Magistrate to extend the period of order as per provisions of Section 144(4) Cr. P. C. It has been simply informed to the Court by the Additional Advocate General that copy of the order dated 4th May 2011 was forwarded to the Commissioner, Gwalior Division, Gwalior, and it was his duty to forward the letter to the State Government. But, the fact remains that there is no material on record to show that whether in accordance with the provisions of Section 144 Cr. P. C. any request had been made by the District Magistrate or other authority to the State Government to extend the period of the order. In our opinion, this act shows carelessness of the machinery of the State Government and administration. The matter is so important, however, proper care has not been taken to act in accordance with the law. If, we up-held the second order passed u/s 144 Cr. P. C. by the District Magistrate dated 1st July 2011 it would nullify the affect of provisions of Section 144(4) Cr. P. C., which is against the provisions of law. It is well settled principle of law that an act which cannot be done directly, could not be permitted to be done indirectly. Hence, in our opinion, the second order passed u/s 144 Cr. P. C. by the District Magistrate dated 1st July 2011 is beyond his power and authority.

Hon"ble the Supreme Court in the case of Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, , has held, as under in regard to power of issuance of repeated orders u/s 144 Code of Criminal Procedure.:

The proviso to Sub-section (4) of S. 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order u/s 144 to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as S. 107 or S. 145 of the Code when individual disputes are raised. If repetitive orders are made it would clearly amount to abuse of the power conferred by S. 144. The nature of the order u/s 144 is intended to meet emergent situati8on and the order u/s 144 is not intended to be either permanent or semi-permanent in character. (1989) ILR 5 Cal. 7 (FB), AIR 1916 Cal. 472, AIR 1916 Mad 1106 (1), AIR 1953 Orissa 96 , Sri Ram Das Gaur Vs. The City Magistrate, Varanasi, and Ram Narain Sah and Another Vs. Parmeshwar Prasad Sah and Others,

Learned Senior Counsel also argued that there are provisions and safeguards have been provided to stop the business of a financial establishment under the Act of 2000, hence, the exercise of power u/s 144 Cr. P. C. by the District Magistrate is against the law, also could not be accepted because in the Act of 2000 there is no power in regard to prohibition of a business of financial

establishment, which is in the business of accepting deposits from the investors. The power of prohibition has been given u/s 144 Cr. P. C. to the District Magistrate in the event of serious disturbance of a grave character. Hence, arguments advanced by the learned Senior Counsel is rejected.

The next question is that what relief can be granted to the Petitioner in this petition. As we have already held in this order that the Petitioner has suppressed material facts, which amounts to playing fraud with the Court. The Petitioner - Company is also in illegal activities, as we have already held earlier in the order that prima facie the activities of the Petitioner - company are illegal, in such circumstances, the Petitioner - company cannot be permitted to carry out its activities even though we have held that the order passed by the District Magistrate u/s 144 Cr. P. C. dated 1st July 2011 is contrary to law.

Hon"ble the Supreme Court in the case of Ramesh Chandra Sankla Etc. v. Vikram Cement Etc. 2008 AIR SCW 7923, has held, as under, in regard to power of Court under Article 226 of the Constitution to quash an order if it would revive on illegality:

The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae*, i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice".

In *Roshan Deen v. Preeti Lal* (2002) J SCC 100, dealing with an order passed by the High Court setting aside an order of Commissioner for Workmen's Compensation, this Court stated: 2001 AIR SCW 4577

Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

(Emphasis supplied)

In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , a Primary Health Centre was formerly inaugurated at village "A" subject to certain conditions. Since those conditions were not satisfied, it was resolved by Panchayat Samithi to shift it to village "B". The Government set aside the said

resolution without giving notice to the Samithi. Subsequently, however, the Government reviewed the said order without giving opportunity of being heard to the affected persons. The action was challenged in the High Court. The High Court held that the order passed by the Government on review was bad. It, however, did not interfere with the order on merits. In this Court it was contended that an order passed on review by the Government was illegal since no opportunity of hearing was afforded and the High Court was wrong in not setting aside the said order. This Court, however, did not interfere with the order passed by the High Court observing that "if the High Court had quashed the order passed by the Government, it would have restored an illegal order and would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi". In the opinion of this Court, therefore, the High Court was right in refusing to exercise discretionary power in the circumstances of the case. *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*,

In *Commissioner of Income Tax, Madras v. Vinod Kumar Didwania* AIR 1987 SC 1260, certain prohibitory orders under the income tax Act, 1961 were passed against the Assessee in connection with removal of goods. By filing a petition under Article 226 of the Constitution, the Assessee challenged the legality of those orders. He obtained ex parte interim injunction, removed the goods and thereafter withdrew the petition. The Revenue challenged the said action by approaching this Court. The Court held that the Assessee had abused the process of law and he could not be allowed to retain undue benefit received by him.

In *Chief Settlement Commissioner (Rural) Punjab and Another Vs. Ram Singh and Others*, , this Court held that an order of allotment of land in excess of lawful entitlement does not allow such allottee to insist that excess land should not be taken away from him.

In *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, an erroneous order was passed by the Prescribed Authority refusing to grant eviction of the tenant under the relevant law. It was set aside by the District Court in appeal though no such appeal was maintainable. When the matter reached this Court, the Court refused to interfere with the order since justice had been done "though technically the Appellant had a point that the order of the District Judge was illegal and improper". *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*,

The learned Counsel for the Company placed heavy reliance on *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, . In a suit by A, an order was passed by the Estate Officer against B holding that it was in unauthorized occupation and was liable to be evicted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He also ordered B to pay damages of Rs. 12 lakhs. An appeal was filed by B against the order and the Appellate Authority confirmed the order of eviction. The High Court, however, felt that an opportunity ought to have been afforded to B to prove that it was a

lawful sub-tenant. The matter, therefore, required remand. At that stage, A prayed that in that case, the matter be remanded as a whole to be decided afresh considering the question of payment of rent/damages also. The High Court upheld the plea, negating the contention of B that A had never challenged the order setting aside the direction as to payment of damages. B approached this Court. 1996 AIR SCW 2944

Dismissing the appeal, confirming the order of the High Court and adverting to substantial justice, this Court stated:

It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. What precisely has been done by the learned Single Judge, is clear from the above emphasised words which be re-read with advantage. The question of claim to damages and their ascertainment would only arise in the event of the Life Insurance Corporation, Respondent, succeeding to prove that the Appellant-Company was an unlawful sub-tenant and therefore in unauthorised occupation of public premises. If the finding were to go in favour of the Appellant-Company and it is proved to be a lawful sub-tenant and hence not an unauthorised occupant, the direction to adjudge the claim for damages would be rendered sterile and otiose. It is only in the event of the Appellant-Company being held to be an unlawful sub-tenant and hence an unauthorised occupant that the claim for damages would be determinable. We see therefore no fault in the High Court adopting such course in order to balance the equities between the contestants especially when it otherwise had power of superintendence under Article 227 of the Constitution in addition. We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed inter-dependently. For those who seek equity must bow to equity.

(Emphasis supplied)

From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills

and Others Vs. State of Haryana and Others, , Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience. Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others,

Hon"ble the Supreme Court further in the case of Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, , has held as under:

7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention The High Court finally held that though the appeal laid before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore, in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the Appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken.

Hon"ble the Supreme Court further in the case of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, , has held as under:

38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the applicant.

Before parting with the case, in our opinion, it is the duty of the law enforcing agency and the administration of the country to find out the real truth behind the activities of the Petitioner - company. It is in the interest of national economy and also in the interest of justice and fair play and civil society. It is the duty of the every citizen and law enforcing agencies and administration that a company would not be permitted to carry on its illegal activities in the guise of deceptive claims and exploit innocent citizens. We sincerely hope that the administration and law enforcing agencies will seriously think about the matter. The observations made by us in this petition are confined to the present case. We are

not passing any judgment in criminal case or recorded a finding against the Petitioner - company. That is the job of the investigating agency and not the Court and for that action has been taken or may be taken in future. Our observations would not be read in those context. However, we are constrained to make observations because after going through the facts of the case, we are shocked and rather astonished.

Looking to the facts of the case, in our opinion, the petition of the Petitioner deserves to be dismissed with heavy cost. Hence, the Petitioner is directed to pay a cost of Rs. 50,000/-(Rupees Fifty Thousand only).