

(1978) 12 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : L.P.A. No"s. 37 and 39 of 1973, 44 of 1975 and 15 of 1977, C.W.P. No"s. 122, 139 and 155 of 1972, 56 and 224 of 1973, 27, 69, 99, 103, 107, 269, 272, 282, 309 and 314 of 1974, 37, 55, 99, 205, 227 and 350 of 1975, 20, 37, 299, 378, 422, 426, 484 and 496

Parcy Chauhan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 06-12-1978

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 21, 27, 56
Advocates Act, 1961 — Section 35(2)
Constitution (Forty-Second Amendment) Act, 1976 — Section 58
Constitution of India, 1950 — Article 13(3), 14, 162, 2(1), 221
Forest Act, 1927 — Section 23, 32
Himachal Pradesh Nautor Land Rules, 1968 — Rule 1, 19, 21, 27, 28
Limitation Act, 1908 — Article 14
Limitation Act, 1963 — Article 10

Citation : (1979) ShimLC 103

Hon'ble Judges : T.U. Mehta, J;D.B. Lal, J

Bench : Division Bench

Advocate : K.D. Sud, Inder Singh, Chhabil Dass, Bhawani Singh, P. Malhotra, R.N. Malhotra, H.K. Bhardwaj, B. Sita Ram, D. Gupta, H.S. Thakur, P.N. Nag, R.K. Sharma, B.B. Vaid, H.M. Sharma, Romesh Chand, Kedar Ishwar, M.R. Vasudeva, B.N. Sharma, S.S. Ahuja, Kamlesh Sharma, O.P. Thakur, Om Parkash, Manohar Lal Sharma and J.R. Thakur, for the Appellant; R.K. Punshi, General, for the Respondent

Judgement

T.U. Mehta, C.J.—This is a group of matters arising from the enforcement of the Rules known as Nautor Rules framed by the Government of Himachal Pradesh in the Revenue Department on September 17, 1968 for the grant of nautor land belonging to the State. These rules have been framed repealing all the previous rules, regulations and Robkars on the subject. These rules have been amended in the month of August, 1969.

2. Though the cases covered by this group have their own individual facts, there

are many points which are common to many of these matters and, therefore, at the request of the learned Advocates of the parties we have formulated some common points and we propose to dispose them of by this common judgment after hearing the learned Advocates who wanted to address us on these points.

3. Before taking up the contentions raised before us, a short reference is required to be made to the rules known as Nautor Rules, 1968. These rules have been framed for the purpose of granting some government land for some specified purposes to certain types of persons. Rule 3 of the Rules provides for definitions, Definition of the expression "Nautor Land", which is relevant, is as under:

Nautor Land" means the right to utilize with the sanction of the competent authority, waste land owned by the Government out side the towns, outside the reserved and demarcated protected forests, and outside such other areas as may be notified from time to time by the State Government in this behalf for any of the purposes mentioned in Rule 5:

Provided that, if the State Government so desires nautor land in any demarcated protected forest may be allowed subject to rules framed u/s 32(g) of the Indian Forest Act

Provided further that the State Government may, if it so desires as an exception in special circumstances grant nautor land in reserved forests as provided u/s 23 of the Indian Forest Act on such terms and conditions as it may, by general or special orders, laydown.

4. Rule 5 prescribes the purposes for which the nautor land can be granted. Rule 6 prescribes the maximum limit of the grant for different purposes, Rule 7 provides for the eligibility for the grant of nautor land and says that no one who is not the "resident" in the estate in which the land applied for is situated, shall be eligible for the grant. Thus according to Rule 7 in order to gain eligibility to obtain a grant of nautor land the person concerned should be the "resident" in the estate in which the land applied for is situated. Now the word "resident" is defined by the subsequent amendment brought in these Rules on August 4, 1969. Previous to these amendments brought about in August, the word "resident" was not given any definition. As a result of these amendments the word "resident" stands now defined as under:

Resident means a bonafide resident of Himachal Pradesh who either holds land in a revenue estate or has seasonal abode and has been living there from generation to generation and includes such bonafide estate artisan, landless agricultural labourer permanently settled in the particular Revenue Estate for not less than 10 years and works there for profit or gain.

5. Rules 8 to 11 are not relevant for our purpose. Rule 12 prescribes the conditions under which the grant can be cancelled and the land granted can be resumed. Rule 13 provides for the manner in which an application for the grant

of nautor can be made. Rules 14 and 1 prescribe the procedure which should be adopted before deciding the application for the grant. Rule 14 has been substituted wholly by the amendments of August, 1969. We shall quote this rule at a subsequent stage. Rule 16 provides for the power to grant nautor land and says that the Revenue Assistant of the district shall be competent to grant nautor lands up to the maximum limits prescribed in Rule 6. Rule 17 is not relevant for our purpose, but reference should be made to Rule 18 which prescribes the procedure for the grant of PATTA for the nautor land. Clauses (a) and (b) of this rule are relevant for our purposes. They are as under:

(a) After nautor land has been sanctioned by the Revenue Assistant under Rule 16 for any of the purposes mentioned in Rule 5 (a) and (b) ante, the Tehsil Revenue Officer shall communicate the dues payable to the Government by the and grantee as decided by the Revenue Assistant in six half yearly installments thereof, interest free, with advice to the grantee for depositing the first instalment within one month from the date of receipt of notice by him. In case the grantee chooses to pay the dues in lump-sum, he will have the option to do so. The grant of patta and mutation in such cases where the grantee will avail himself of the concession of making payment in instalments shall stand postponed until full p has been made. But the possession of the land granted to him shall be delivered on deposit of the first instalment. The failure of the grantee to pay any of the instalments punctually will render the grant liable to resumption and the amount already paid to forfeitures. Pattas will be issued forth with in such cases where full payment may be made in lump sum after the expiry of the period for filing an appeal.

(b) After the expiry of the period prescribed for filing an appeal/revision the Patta shall be issued under the seal and signature of the Collector of the District to whom it will be put up by the Special Agency after due completion.

6. Rule 19 says that the grantee of the Patta shall be bound by the conditions of the Patta subject to the provisions of these Rules. Rule 20 is not relevant for our purpose. Rule 21 stipulates that the Revenue Assistant who passes orders under Rule 16 should send copies of his order sanctioning the grant to the objectors so that these objectors may get proper opportunity to file appeals to the Deputy Commissioners. Rules 22 and 23 are not relevant for our purpose. Rules 24, 25 and 26 prescribe procedure to be adopted before resumption of possession. Rule 27 provides for the grant of nautor land in exchange.

7. Rule 28 prescribes for appeals and says that an appeal from the order of the Revenue Assistant under Rule 16 shall lie to the Deputy Commissioner within 60 days from the date of the order. Rule 29 provides for review and Rule 30 provides for revision. Both the rules are relevant and, therefore, they are quoted as under:

29. Review.-The Financial Commissioner or the Commissioner or the Deputy Commissioner or the Revenue Assistant may, either of his own motion or on the

application of any party interested, review, and, on so reviewing, modify, reverse or confirm any order passed by himself or any of his predecessors in office provided as follows:

(a) When the Revenue Assistant thinks it necessary to review any order, he shall first obtain the sanction of the Deputy Commissioner.

(b) When the Commissioner or the Deputy Commissioner thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Financial Commissioner in the case of the Commissioner and the Commissioner in the case of the Deputy Commissioner.

(c) The application for a review of an order shall not be entertained unless it is made within 90 days from the passing of the order and unless the applicant satisfies the Financial Commissioner or the Commissioner or the Deputy Commissioner or the Revenue Assistant, as the case may be, that he had sufficient cause for not making the application within that period.

(d) An order shall not be modified or reversed in review unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.

(e) An order against which an appeal has been preferred shall not be reviewed.

30. Revisions.- (i) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by any officer subordinate to him.

(ii) The Commissioner may at any time call for the record of any case pending before or disposed of by any officer subordinate to him.

(iii) If, in any case, in which the Commissioner has called for the record, he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.

(iv) The Financial Commissioner may in any case called for by himself under Sub-rule (1) or reported to him under Sub-rule (iii), pass such orders as he thinks fit:

Provided that he shall not under this rule pass any order reversing or modifying any proceedings or orders of the subordinate Revenue Officer without giving the parties concerned an opportunity of being heard.

The above referred rules show the broad outlines of the scheme envisaged by the Government for the grant of the nautor land.

8. Now the general contentions which are raised by the parties, and which are common in some of the matters of this group can best be stated in the following points:

1. Whether the Nautor Rules framed by the Government are statutory or

executive in character ? If they are found to be executive in character whether they have a force of law?

2. Whether a contravention of any of these Rules, or illegality in the proceedings under them, resulting in an injury of substantial nature, or in substantial failure of justice, would fall within Clause (b) or (c) of Article 226(1)?

3. Whether the criterion for grant of nautor that the applicant should be living in the estate from generation to generation" as given in the definition of the word "resident" is a valid criterion?

4. Whether a mere order to sanction a Patta passed under Rule 16 vests any right in favour of the grantee?

5. What is the scope of the suomoto exercise of the power of Review and Revision under rules 29 and 30? Whether a Patta once granted can be treated as cancelled in case the order passed under Rule 16 is reversed in appeal, review or revision?

6. Under the scheme of Nautor Rules who can object to the grant who can pursue his remedy in appeal or review.

7. To what extent the grant of a Patta under Rule 18 can bind an objector whose right to file an appeal or review survives or whose appeal or review is pending on the date on which the Patta is granted.

8. What is the scope of the arbitration Clause (condition No. 7 of the general form) of the Patta granted under Rule 18?

9. Whether the Writ Petitions filed under Article 226 and/or Article 227 before the 42nd amendment to the Constitution abate on the ground that there is an alternative remedy of making a reference to an Arbitrator under the arbitration clause of the Patta.

9. Taking the first point for our consideration, it was contended that these Nautor Rules are not issued under any rule making power of the Government granted to it by a statute and hence they are not statutory rules and are merely executive instructions. It was contended that a breach of such executive instructions, even though resulting in injustice, would not be justiciable and the person making a grievance of the said breach would have no remedy whatever.

10. It is true that these Rules have not been issued by the Government under any statute and hence they are not the result of the exercise of any legislative powers. Nautor lands belong to the State and, therefore, it is for the State Government to formulate principles on which the grant of such lands can be made. These rules incorporate these principles and are, therefore, issued in exercise of the executive powers of the State. They contain a declaration of principles and policy on which the grant of land owned by the State can be made and the procedure which should be followed at the time of making that grant. Under Articles 162 of the Constitution, the executive power of the State extends

to the matters with respect to which the Legislature of the State has power to make laws, subject of course, to other provisions of law. Entry 18 of the State List indicates the legislative power of the State to frame laws relating to transfer and alienation of agricultural land. It is, therefore, evident that the State has an executive power to frame rules as regards the transfer and alienation of Nautor lands of its ownership.

11. The question whether these rules have a binding force of law required to be decided by reference to the rules themselves. In the foregoing portion of this judgment we have given the whole scheme of these rules. This scheme reveals that by these rules the Government have prescribed a complete code of conduct which is required to be adopted by those who have to administer these rules. The rules prescribe a detailed procedure of inquiry at every stage and even provide for appeals, reviews and revisions. They give definitions of certain expressions used in the rules and take away an element of arbitrariness in the procedure to be adopted at the time of granting, the land as well as at the time of resuming the grant. They prescribe certain forms for proceeding at various stages. Thus they create rights and obligations of different connotations at different stages, and provide a binding code of conduct from which no departure can be made. Thus they possess all the characteristics of "Law".

12. Even executive rules and orders can have a binding force of law if they possess the required characteristics of "Law". The question is what are these characteristics? We find that no hard, fast and rigid tests can be prescribed for determining whether particular rules or orders amount to "Law", but generally speaking, we can say that a code of conduct of binding nature applicable to all people in general in all its details, eliminating arbitrariness and him, and creating rights and obligations of reciprocal nature would amount to "Law" in its general sense. As observed by the Supreme Court in *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*,

Though theorists may not find it easy to define law as distinguished from executive orders, the main features and characteristics of law are well recognized. Stated broadly, a law generally is a body of rules which have been laid down for determining legal rights and legal obligations which are recognized by courts.

In *Chandrakant Sakharam Karkhanis and Ors. v. State of Maharashtra and Ors.* 1977 LabIC 654, a Full Bench of Bombay High Court has considered the binding nature of the rules framed by the Government and has observed as under:

The Petitioners sought to urge before the Division Bench that several of the Circulars, Orders and Resolutions issued by the State Government that operated to their prejudice being executive Instructions or directions could not prevail over the statutory rules that have been framed by the Governor in exercise of the rules making power conferred under the proviso to Article 309 and that is why the question has assumed considerable importance as to whether the several

Circulars. Resolutions and Orders in question are really in the nature of executive instructions or directions issued by the State Government in exercise of executive power or amount to statutory rules framed by the Governor under the proviso to Article 309 of the Constitution, and this basic question, in our view, will have to be resolved by taking into account three or four aspects, namely (a) sub (b) general applicability, (c) form and formalities if any and (d) publication.

If we apply these tests the Nautor Rules there remains no doubt that almost all the tests are satisfied by these Rules. Hence they must be treated as possessing the force of law even if they are not statutory in character. Therefore, the authorities administering these rules cannot contravene them and if their contravention results in any injury of substantial nature this Court redress the wrong.

13. As held in *Union of India v. Agencies* AIR 1968 SC 718, the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot, on some undefined and undisclosed grounds of necessity or expediency, fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen. As observed by Shah, J. in *Century Spinning v. Ulhansnager Municipal Council* AIR 1971 SC 102), if our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted, because a public body is not exempt from liability to carry out its obligation arising out of representation made by it relying upon which the citizen has altered his position to his prejudice. This Court has interpreted rules framed by the Government to regulate admissions to the College of its own ownership in a similar manner in *Km. Manju and Another Vs. State*, These rules were published in form of a prospectus. A Division Bench of this Court held that the rules contained in such a prospectus were representations to the public or to individual seeking admission and, therefore, it would not be open to those who make such representation even as a result of executive orders to apply some other rules or criteria not contained in these rules. We have affirmed (his view in C.W.P. No. 216 of 1978 Therefore, even in view of this established position in law, we find ourselves unable to agree with the view that since the Nautor Rules are merely executive instructions, they can be ignored and the breach thereof would not create any right in the Appellant- Petitioner to get any redress from this Court under Article 226 of the Constitution.

14. The next question which arises to be considered is whether the breach of these rules would fall within the ambit of Clauses (b) and (c) of Article 226(1) the Constitution. as amended by the 42nd Amendment. The amended, Article shows that High Court shall have power to exercise its extraordinary jurisdiction for three matters, namely:

(a) For the enforcement of any of the fundamental rights described in Part III of the Constitution.

(b) For the redress of any injury of a substantial nature by reason of the contravention of any other provision of this constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder, or

(c) For the redress of the injury by reason of any illegality in any proceedings by or before any authority under any of the provisions referred to in (b) above where such illegality has resulted in substantial failure of justice.

If the breach in question results in breach of any of the fundamental rights the case falls within the first item mentioned above. There is no dispute about that position. The dispute, however, is whether the items (b) and (C) would be attracted in case of a breach of any of the Nautor Rules, in view of the fact that these rules are not statutory in character. It may be noted here that Clause (c) of Article 226(1) makes an obvious reference to Clause (b) and, therefore, the injuries which are contemplated by Clause (c) would be the injuries which should have relation to the proceedings arising from "any enactment, Ordinance, Order, rule, regulation, bye-law or other instrument made the reunder" as contemplated by Clause (b). Under the circumstances. The scope of Clause (c) is of the same "extent as the scope of Clause (b) of Article 226(1). In order to facilitate the discussion on this question, it would be proper to quote Clause (b) which is found in Article 226(1) as under

(b) for the redress of any injury of a substantial nature by reason of the contravention o any other provision of this Constitution or any provision of any enactment or ordinance or any order, rule, regulation, bye-law or other instrument made thereunder.

15. The learned Advocate General contended that a matter would fall within the ambit of this clause only if it is found that there is a contravention of a rule "made under" any enactment or ordinance, and since Nautor Rules are not made under any enactment or ordinance, neither this clause nor Clause (c) would have any application. In support of this contention he pointed out that the words "made thereunder" which appear at the end of Clause (b) qualify not merely the immediately preceding words "other instrument" but the whole set of words beginning from "any order". According to him, therefore so long as the rules, the breach of which is complained of, are not found to have been made under the Constitution or any enactment or ordinance, Clauses (b) and (c) of Article 226(1) would have no application in this connection he also put reliance on two Full Bench decisions one of the High Court of Bombay in Sh?nti Lal v. M.A. Rangaswami 79 Bom LRI, arid the other of the High Court of Andhra Pradesh in Union of India v. Wazir Sultan Tobacco Co. Ltd. (1978) 1 AnWR 233.

16. After anxiously considering this contention of the learned Advocate General we find ourselves unable to accept the same. We are of the opinion that the grammatical construction of the language employed in Clause (b) does not justify the view canvassed by the learned Advocate General. We find that the plain

reading of Clause (b) suggests that the expression "made there under" applies only to the words "other instrument" and does not apply to the preceding set of words "any order", "rule", "regulation" and "bye-law". The reason for this is that if the construction of Clause (b) is closely scrutinised, it will be found that the disjunctive "or" is used in the scheme of the sentence only at particular places. This word "or" is used after the word "enactment" so as to disjunct that word from the following word "ordinance". Similarly the word "Ordinance" is disjuncted from the whole set of subsequent words "any order, rule, regulation, bye-law". It is significant to note that after the words "any order" this disjunctive is not used but only a comma is used. It is only after the word "bye-law" that the disjunctive is again used in order to disconnect the words "other instrument" from the rest of the words which precede. Thus if the disjunctive word "or" is to be given its proper meaning, it follows that the Clause (b) contemplates the following categories of laws, the contravention of which brings the case within the purview of Clause (b) These Categories are:

- (1) Constitutional Law.
- (2) Statutory law such as an enactment or ordinance.
- (3) Other types of Laws such as orders, rules, regulations and bye-laws.
- (4) Other statutory instruments made either under any enactment or under any Ordinance or under any order, rule, regulation or bye-law.

17. It was contended that the words "any order, rule, regulation, bye. law or other instrument" appearing in Clause (b) of Article 226(1) suggest the category of subordinate legislation and that it is for that reason that the expression "made thereunder" is used at the end to suggest that the whole of this category constitutes a class of subordinate legislation which derives its parentage from a statute such as the Constitution or an enactment or ordinance.

This contention is not acceptable because the qualifying words "made thereunder" were necessary in case of an "instrument", because ordinarily, "instruments" are non-statutory in character and their contravention would not attract extra-ordinary jurisdiction of the High Court when they are meant to be statutory in character, the contravention of which would attract the extra-ordinary jurisdiction of the High Court, they must be found to have been made "under" the Constitution or an enactment or an Ordinance, order, rule, regulation or bye-law having the force of law. In other words, the qualifying words "made thereunder" were necessary to suggest what types of instruments were covered by Clause (b). No such necessity, however, existed "with reference to the preceding words whose ordinary and usual connotation suggests that they have a force of law. In this connection it would not be out of place to refer to Article 13(3) of the Constitution which says that, unless context otherwise requires, the expression "Law" which is used in that Article, includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. Article 226 of the Constitution was amended for prescribing High

Court's extra-ordinary jurisdiction within specified limits and Clause (b) was enacted for giving redresses in cases of breach of law. There was no scope for any doubt that an order, rule, regulation or bye-law can possess a force of law even though not made "under" any enactment or Ordinance. The scope for such a doubt was, however, plenty, with regard to an "instrument" unless the nature of the instrument was specified by using the qualifying words "made thereunder". This, in our opinion, is the reason why the words "any order, rule, regulation, bye-law" are grouped together without any use of disjunctive "or", and the words "other instruments" are separated from this group by the use of the said disjunctive.

18. It was contended that if the words "other instruments made thereunder" are taken as suggesting a separate category, the use of the word "other" in relation to the word "instrument" becomes inexplicable as there is no "instrument" referred to in the previous portion of the clause. We find that the word "other" is used with reference to the word "instrument", because even an order, rule, regulation and bye-law are sometimes termed as statutory instruments and the Parliament which has enacted Clause (b) in the amended Article 226 wanted to distinctly point out to the statutory instruments which are not covered by the instruments known as order, rule, regulation or bye-law. In this connection it may be noted that Craies on Statute Law has described statutory instruments as under:

Statutory instruments are either (1) orders in Council, or (2) other instruments which are variously described as orders, rules, regulations, warrants, licenses, instruments, etc.

Thus we do not find anything in the use of the word "other" which would support the contention canvassed by the learned Advocate General.

19. We may here make a reference to a Full Bench decision given by the High Court of Andhra Pradesh which has considered this aspect of the matter in *Union of India v. Vazir Sultan Tobacco Co. Ltd.* (1976) 1 AnWR 23 (sic). In that case it was contended with reference to Clause (b) that the words "any order" are wide enough to cover even an executive order and the expression "bye-laws" includes even the bye-laws framed by a corporate body as the expression "made thereunder" governs and qualifies only the words "other instruments" and not the set of words "any order, rule, regulation, bye-law". This contention was repelled by the High Court of Andhra Pradesh on the ground that the use of the word "other" before the word "instrument" suggests that there are other instruments in the foregoing categories. Relying upon the above referred meaning of the expression "statutory instruments" given by Craies, the Full Bench of Andhra Pradesh High Court has observed that the use of the word "other" brings out the intention of the Parliament that any orders, rules, regulations, bye-laws are in the nature of instruments made under the Constitution, any enactment or Ordinance and since all of them belong to one genus the word "other" has been used before the expression "instrument". This

view taken by the Andhra Pradesh High Court, therefore, obviously supports the contention of the learned Advocate General and goes against the view which we are taking.

With utmost respect to the learned Judges of the Full Bench of Andhra Pradesh High Court who have taken this view, we find ourselves unable to accept the same for the reasons already given above. We find that the attention of the learned Judges has not been sufficiently drawn to the importance of (he disjunctive "or" which the Legislature has deliberately used in framing the language of Clause (b) of Article 226.

The argument that the expression "any order" or "bye-law" would cover even an executive or administrative order or a bye-law framed by a body corporate would not hold any ground if the principle of *noscitur a sociis* is properly applied to these words found in Clause (b). It is evident, as already noted above, that Clause (b) is enacted with a view to prevent the contravention of rules, orders, bye laws which have a force of law. These words when they are used in connection with an enactment or Ordinance, take the colour and connotation of an enactment or Ordinance by the application of the principle of *noscitur a sociis* which says that the meaning of a doubtful word may be ascertained by reference to the meaning of the words associated with it. Therefore, when Clause (b) makes a reference to an order, rule, regulation or bye-law, these words would mean only those orders, rules, regulations and bye-laws which from their very nature have a force of law even though they may not amount to a subordinate legislation made under any enactment or Ordinance.

20. It is undoubtedly true that a Full Bench of Bombay High Court has made certain observations in Shanti Lal's case (*supra*) giving full support to the point of view canvassed by the learned Advocate General. Explaining the scope of Clause (b) of Article 2(1), the said Court has observed as under:

The contravention contemplated by Clause (b) is, apart from the contravention of a constitutional provision, a contravention of some legal provision which may be contained in an Act or an Ordinance or in any subordinate legislation made in exercise of statutory or constitutional power the words "made thereunder" qualify the entire set of words "any order, rule, regulation, bye-law or other instrument" and it refers to the words "constitutional enactment or ordinance" mentioned earlier in the same clause.

Thereafter, the learned Judges have been pleased to observe as under:

Thus any context in which the word "instrument" has been used following the words "order, rule, regulation, bye-law", in our view the "instrument" has reference to a subordinate legislation or something which has the force of law made in the exercise of some authority under the constitution or any enactment or ordinance. Two things must, therefore, be shown before a litigant can invoke jurisdiction of the High Court under Article 226(1)(b). There must be a contravention of either any provision of the Constitution or any law, ordinance or

any subordinate legislation or any instrument having the force of law and that contravention must result in an injury of a substantial nature.

These observations obviously go contrary to the view which we are taking on this point. We, however, with great respect to the learned Judges who have made the above observations, find ourselves unable to take the view that the words "made thereunder" qualify the entire set of words "any order, rule, regulation, bye-law or other instrument". We have already given the reasons for the view which we are taking.

21. We would like to point out at this stage that if the view taken by the above referred two High Courts is accepted, then a person would not get any redress for an injury of a substantial nature, if the rules such as Nautor Rules which have the force of law, are openly flouted. It is doubtful whether a person in such cases would have even the common law remedy by filing a suit in ordinary Courts. Therefore, the question is whether the Parliament while amending Article 226 of the Constitution intended to take away the High Court's extra-ordinary jurisdiction under Article 226 in cases of contravention of those rules which have the force of law but which are not backed by any statutory law. We do not find any justification for the view that the Parliament wanted to give protection against the breaches of statutory law, but intended to deny a similar protection against the breaches of rules which, for all intents and purposes, possess the force of law. Taking of such a view would obviously militate against the very basic fundamentals of the rule of law, and if this Court's decision is to rest on the choice of one of the two equally possible interpretations which are available, for construing Clause (b) of Article 226(1), this Court would not hesitate to accept that interpretation which is likely to further, rather than retard, the establishment of rule of law.

22. We, therefore, hold that the words "any order, rule, regulation. Bye-law" appearing in Clause (b) of Article 226(1) are not in any manner qualified by the expression "made thereunder" and, therefore, even if any order, rule, regulation or bye-law is not backed by any statutory law, which as an enactment or Ordinance, the contravention of such an order, rule, regulation or bye-law would attract the provisions of this clause provided that the order, rule, regulation or bye-law concerned has the force of law and that its contravention results in any injury of substantial nature.

23. We would, however, emphasize here that the order, rule, regulation and bye which are contemplated by Clause (b) are only those which have the force of law. Therefore, the contravention of an order which is merely an executive order having no force of law or of a rule, regulation or bye-law which has no force of law would not attract the provisions of Clause (b) of Article 226(1).

24. Next question is whether the criterion of living from "generation to generation" as provided in the definition of the word "resident" introduced by the notification dated 4-8-1969 is ultra vires the provisions of Article 14 of the

Constitution.

In the foregoing portion of this judgment, we have already quoted the definition of the word "resident" as given in the notification of August, 1969. That definition shows that one of the requirements of being a resident is that the person concerned should be living "from generation to generation" in the estate concerned. On proper analysis we find that following are the requirements of a resident within the meaning of this definition:

1. He must be a bona fide resident of the State of Himachal Pradesh.
2. He must either hold land in a revenue estate or must have a seasonal abode in that revenue estate.
3. He must be living in that estate "from generation to generation".

The definition also contains an inclusive clause which makes special provision with regard to weaker sections of the society such as artisans and landless labourers. In these matters we are not concerned with this inclusive clause of the definition. The above analysis shows that the requirement of living in an estate from generation to generation applies to both the categories of persons, namely (i) those who hold land in the revenue estate, and (2) those who have a seasonal abode in the estate. Shri Sood who appears on behalf of some of the grantees contended that the requirement of living in the estate from generation to generation does not apply to both the categories but applies only to the category covered by those who have a seasonal abode in the concerned estate. We are told that the authorities who administer the Nautor Rules apply this requirement of living in an estate from generation to generation to both the categories.

25. We find that on any of the above noted two interpretations the requirement of living in an estate from generation to generation is very vague and indefinite. In our opinion, this requirement does not provide any intelligent differentia which can clearly distinguish the persons covered by that grouping from the persons who are left out of that grouping, thus violating Article 14 of the Constitution.

As pointed out by a Division Bench of this Court in *Manju v. State* (supra), it is difficult to comprehend how a person can live in a particular estate beyond his own generation so as to fall within the category of the persons living "from generation to generation".

The expression "generation to generation" is even otherwise vague as it does not convey how many generations are contemplated by it. While one would comprehend it as meaning the bare minimum of two generations, some one else may well construe it as meaning a limitless chain of generations lost in antiquity. If the latter view prevails, there would be no body left in the State of Himachal Pradesh who would be covered by this definition, because even the direct descendants of the earliest Aryan settlers of this area cannot be considered to be living in a particular estate from generation to generation and even the descendants of those who have migrated from one revenue estate of the State to

the other in the past, cannot find their place in the ambit of this definition.

26. Thus, if the qualification contemplated by the Government in prescribing the necessity of living in that estate from generation to generation is found to be vague and indefinite, it would obviously produce an element of uncertainty and arbitrariness in the administration of the Nautor Rules defeating their very object and resulting in an infringement of Article 14 of the Constitution.

We therefore, hold that the third requirement of the definition of the word "resident" covered by the words "and has been living from generation to generation" are offending the fundamental right contemplated by Article 14 of the Constitution and, therefore, should be struck down from the definition. These words are severable from the rest of the portion of the definition and, therefore, the remaining portion of the definition would remain valid.

27. This would undoubtedly result in some anomalous situation because if the definition of the word "resident" is left as after deleting the requirement of living from generation to generation, an ordinary holder of land in an estate would, by mere proof of the fact that he holds land in the estate, be entitled to a grant, while a landless labourer or an artisan would be called upon to prove that he is permanently settled in the estate for not less than 10 years. We however cannot remove this anomaly. The Government, if it so desires, can remove this anomaly by redefining the word "resident" in a suitable and legal manner.

28. The fourth contention between the parties was as regards the question whether a mere order sanctioning the grant passed under Rule 16 vests any right in favour of the grantee.

The fifth point which is contended between the parties is with regard to the power of the Officers who are expected to implement the Nautor Rules, to review or to revise an order or proceeding already passed or made under the Rules. We propose to deal with both the contentions together.

29. The contention of the grantees is that once the order for grant is made under Rule 16, it is not competent for any of the authorities acting under the Rules to review that order, while the contention of the Respondents is that power of review is conferred on different authorities by Rule 29 and power of revision is conferred by Rule 30, and under both these rules the power to review and to revise any orders or proceedings can be exercised even . Suo moto by the concerned authorities.

30. We have already noticed that an order to grant Nautor can be passed under Rule 16. After this order is passed, actual Patta can be granted to the grantee under rule 18 which is already quoted above. These provisions of Rule 18 show that after the sanction to grant Nautor land is given by the Revenue Assistant under Rule 16, the Tehsil Revenue Officer should communicate the dues payable to the Government by the grantee as decided by the Revenue Assistant in six half yearly instalments. The grantee is at liberty to deposit this amount either in

lump or in instalments. The rule further provides that if the grantee avails of the concession to make the payment in instalments, the grant of the Patta shall stand postponed until full payment has been made. However, in that case the possession of land granted to him shall be delivered on the deposit of the first instalment. In case the grantee fails to pay any of the instalments punctually the grant becomes liable to be resumed and the amount already paid becomes liable to be forfeited. This scheme of Rule 18 thus shows very satisfactorily that the grantee is not entitled to obtain any Patta till the payment of the amount which he is required to pay pursuant to the order of the Revenue Assistant is made. In other words, a mere order to grant the Nautor land to a particular grantee does not create any right in favour of the grantee.

Apart from that, if the provisions for review contained in Rule 29 and for revision contained in Rule 30 are perused it will be found that both these rules vest very wide powers on the authorities concerned to review or to revise a decision taken by the Revenue Assistant to make a grant under Rule 16. This power can be exercised suo moto or also on application to be made by a party. Under these circumstances, it is not correct to say that once an order to grant Nautor land is passed under Rule 16, that order attains a finality. Order of that type can be reviewed or revised under rules 29 and 30 even suo moto by the officers mentioned in these rules.

31. Now coming to the scope of the exercise of the power of review and revision, the bare perusal of Rules 29 and 30 will show that both these provisions are very peculiar inasmuch as they do not prescribe the circumstances and conditions under which the power to review or to revise can be exercised, nor do they prescribe any period of limitation within which the power could be exercised. Rule 30 specifically states that the power of revision can be invoked by the authorities concerned "at any time". However, even these words do not appear in Rule 29. Clause (c) of Rule 29 prescribes that application for review shall not be entertained unless it is made within 90 days from the passing of the order. This clause obviously speaks of an application for review and, therefore, the period of limitation of 90 days applies only in cases in which an aggrieved party files an application to the concerned authority for reviewing an order already passed. This clause has, therefore, nothing to do with the review power which is to be exercised suo moto and without any application.

Thus, in absence of any prescription as regards the circumstances and conditions under which the power of review and revision could be invoked as well as regards the period of limitation within which the power could be invoked, the width and amplitude of the power vested in the concerned authorities under these two rules appear to be very wide and striking. This is rather a very extraordinary situation because it makes the tenure of the allottee very insecure.

32. However, considering the nature of the proceedings which are to be undertaken under the Nautor Rules it is not impossible to read judicially some limitations as regards the purpose for which as well as the period during which

the suo moto action by way of review or revision could be taken by the concerned offices.

The Nautor Rules show that before an order to make a grant is passed under Rule 16, a detailed procedure, as prescribed by the rules 13, 14 and 15 is required to be complied with, giving information to all the relevant Government agencies. By the notification dated August 4, 1969 original Rule 14 is fully substituted prescribing a very detailed procedure. According to Clause (e) of this rule, the concerned Gram Panchayat has to issue proclamation inviting objections to the grant and to consider these objections and then to forward its report on the same to the special agency. If, therefore, a grant is ordered to be made after such a detailed enquiry, it is obvious that it cannot be cancelled arbitrarily and without proper reasons. If a private party is aggrieved by an order under the Rules he can invoke review or revisional jurisdiction within the prescribed period of limitation on the grounds peculiar to the facts of his case. However, this jurisdiction is invoked suo moto, it should obviously be, in view of the above referred provisions of rules 13, 14 and 15" to test the "legality and propriety" of the order sought to be revised or review- and also to see whether the interest of the State is properly preserved or not. In our view, therefore, even though rules 29 and 30 do not specifically and in clear words prescribe the Circumstances and conditions under which the power can be exercised, it can be justly said that this power cannot be exercised whimsically and arbitrarily, but can be exercised with a view to test the legality and propriety of the order passed and also with a view to see that the State's interest is properly preserved.

33. Similarly, we find that though no period of limitation is prescribed by these Rules, for invoking review and revisional jurisdiction suo moto, the said jurisdiction should be exercised within a reasonable time in view of the fact that the grant is presumed to have been made after full and detailed enquiry and also in view of the fact that the grantee would obviously go on making commitments to implement the purpose for which he has obtained the grant. The grantee's tenure is always governed by the terms of the Patta issued under Rule 18, and hence the said tenure should not be made highly precarious by the suo moto exercise of review and revisional jurisdiction after an unreasonable length of time.

It is now well established that in cases where a period of limitation is not prescribed for the exercise of a particular power, it is open to the Court to restrict the exercise of that power within a reasonable period of time. A question similar to this was considered by the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, . The Supreme Court in that case considered the provisions of Section 211 of Bombay Land Revenue Code which gives the State Government and every Revenue Officer not inferior to the rank of an Assistant or Deputy Collector power to call for record of an enquiry or proceeding of any subordinate Revenue Officer for the purpose of satisfy itself or himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such enquiry. The section does not provide for any period of

limitation for the exercise of this to Facts of that case were that a private party moved the Collector for a Commissioner to use agricultural land for non-agricultural purposes u/s 65 of the Bombay Land Revenue Code. Section 65 of that Code provides that if the Collector does not inform the applicant of his decision within a period of three months the permission applied for shall be deemed to have been granted. Reading this section along with Section 211 of the Code, the Supreme Court held that three months period was considered by the Legislature for the purpose of giving permission for non agricultural use as reasonable. However, the Supreme Court subscribed to the principle that power contemplated by Section 211 of the Bombay Land Revenue Code must be exercised within reasonable time, and on the question as to what would be the reasonable time, the Supreme Court observed that that question must be determined with reference to the facts of the case concerned and the nature of the order which was sought to be revised. We find that this decision has been subsequently followed by the Gujarat High Court in *H. N. v. State* 11 GLR 307 and thereafter in *Bhagwanji Bawanji Pate v. State* AIR 1971 Guj 64. In this latter case, the High Court of Gujarat held that in view of the period of limitation prescribed in Article 14 of the First Schedule of the Indian Limitation Act, 1908 which is equivalent to Article 10 of the Limitation Act of 1963, the maximum period which should be considered reasonable for taking an action to revise the order concerned would be one year.

In *Purshottam Lal Dhawan Vs. Dewan Chaman Lal and Another*, the Supreme Court had an occasion to construe the period of time within which the Custodian General may call for the record of any proceedings in which any Custodian has passed an order. These powers of the Custodian General are prescribed in Section 27 of the Administration of Evacuee Properties Act, 1950. The section provides that the power can be invoked by the Custodian General "at any time". The Supreme Court found that Rule 31(5) framed u/s 56 of the Evacuee Property Act, 1950 provided that petition for revision should ordinarily be made to the Custodian General within sixty days. *Ex facie*, this rule went against the provision of Section 21 of that Act which empowered the Custodian General to exercise his revisional powers "at any time". But the Supreme Court held that Rule 31 (5) did not prescribe any inflexible period of limitation of sixty days, because it used the word "ordinarily". Thus, the Supreme Court harmonised the rule with the provisions of Section 27 but observed that whenever power is required to be exercised "at any time", the same should be exercised within a reasonable period of time. The High Court of Punjab also shared this view in *Smt Baiwant Kaur v. Settlement Commissioner* AIR 1964 P&H 33.

34. In view of this position we conclude that the power of review contemplated by Rule 29, and of revision contemplated by Rule 30, could be exercised only within a reasonable time. What is a reasonable time is a question of fact depending upon the peculiar facts and circumstances of each case. If a land is given for agriculture or horticulture or for constructing water-mill or water channel, we think that ordinarily a period of one year to exercise the power of

review or revision may be considered reasonable in view of the fact that the fruits of these operations could be reaped within one year. However, if the Nautor land is granted for other purposes, such as construction of building for residence or construction of Dharmsala, etc., then having regard to the facts of the case the period of time would be even less.

35. This disposes of the points Nos. 4 and 5. We now proceed to take up for our consideration the points Nos. 6, 7 and which are interrelated.

36. In *Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others*, the Supreme Court has held that where an order making an allotment is set aside the title which is obtained on the basis of the continuance of that order also falls with it because if the validity of that order is effectively put to an end it would be impossible to maintain the Sanad unless there any were express provisions in the Act or in the Rules to show that the grant still stands. According to these observations, therefore, the original order sanctioning the grant being the basis of the Patta, the Patta itself would fail if the basic order of sanctioning that Patta fails or is set aside for some reason. The only exception which is carved out by the Supreme Court to this principle is of the cases where anything contrary is found either in the rules or in the terms of the Patta or Sanad itself. Therefore, bearing this decision of the Supreme Court in mind we have to decide the question as to the effect of the grant of the Patta under Rule 18 of the Nautor Rules.

37. Now if a reference is made again to the Nautor Rules framed by the Government it will be found that these Rules provide for different forms which are prescribed by the Government under different Rules for the purpose of their implementation. Form D prescribes a form of a general Patta to be issued by the Government in favour of the grantee. For E prescribes a form of the Patta with regard o the land grant for horticultural purpose. Both these forms contain an arbitration clause which is condition No. 7 in the form of in the form of general Patta and condition No. 9 in the form of the Patta issued for horticultural purpose. Both these conditions are similar in terms. They are as under:

7. (i) If any question of difference whatsoever shall at any time hereafter arise between Government and the grantee in any way touching or concerning this grant, or the constructions, meaning, operation or effect thereof or of any clause therein contained or as to the rights, duties or liabilities of either party under or by virtue of this grant or touching the subject matter of the grant or arising out of or in relation thereto then save in so far as the decision of any such matter has been hereinbefore provided for and has been so decided, the matter in difference shall be referred to the arbitration of the Revenue Secretary to the Government of Himachal Pradesh, who shall have power to decide any matter so referred, including the following questions:

(a) Whether any other provision has been made in these presents for the decision of any matter and if such provision has been made whether it has been

finally decided accordingly and

(b) whether the grant should be terminated or has been rightly terminated, and what are or will be the rights and obligations of the parties as the result of such termination.

(ii) The decision of the arbitration shall be final and binding and when any matter so referred to arbitration involves a claim for the award, increase or reduction of a sum of money by way of compensation or any other payment or recovery of money, only the amount decided by the arbitrator shall be recoverable in respect of the dispute so referred.

as Condition No. 5 of the form of the general Patta provides under:

If the grantee fails to perform or commits a breach of any of the terms and conditions of the grant or suffers or permits such a breach or non performance, the Revenue Assistant may at any time thereafter terminate the grant and resume possession of the land and may pull down any structure existing thereon, and sell the materials thereof and retain the proceeds of the sale.

The condition corresponding to this condition No. 5 is condition No. 7 in the Patta issued for horticultural purpose.

Other conditions mentioned in both the forms are not very much material for our purpose, but it may be generally mentioned that the Pattas of both the kinds prescribe the exceptions and reservations made by the Government for the purpose of the respective grants. There are some conditions in the Patta with regard to the obligations of the grantee.

38. Now the contention of the grantees in all these cases is that when once a Patta is granted for any of the recognized purposes under Nautor Rules, the contractual relationship between the grantee and the Government becomes final. and the order of grant, pursuant to which the Patta is granted, merges in the Patta itself, and therefore, all the future relations between the grantee and the Government with regard to the land granted are governed by the terms of the Patta, and hence, it is not open to the Government to resume the grant and cancel the Patta without complying with the terms and conditions contained in that Patta. This contention of the grantees has t aspects, namely (1) as between the Government and the grantee the grant cannot be resumed without complying with the terms and conditions mentioned in the Patta, and even if the original order sanctioning the grant is subsequently set aside by the concerned authorities in exercise of the powers of review and revision contained in rules 29 and 30, Patta cannot be revoked; (2) even in cases wherein an aggrieved party has preferred an appeal under Rule 28, or a review application under Rule 29, it should not be open to the Government, or the authorities acting on behalf of the Government, to resume the Patta in case the Appellant, who has preferred an appeal, or a Petitioner, who has preferred a review, eventually succeeds in getting the order sanctioning the grant under Rule 16 set aside.

As against this, it is contended by the other side that, since a Patta which is granted under Rule 18 is merely a consequence of the order sanctioning the grant under Rule 16, the Patta should fail and the land in question would become liable to be resumed the moment the order passed under Rule 16 is set aside in appeal, review or revision under Rule 28, 29 or 30 of the Rules. For this proposition the Respondents have put reliance on the above referred decision of the Supreme Court in *Mithoo Shahani v, Union of India*.

39. While considering these rival contentions of the parties, one important fact which requires to be noted is that since the forms in which Pattas are to be issued are prescribed by the Rules, the terms and conditions embodied in the Patta become part and parcel of the Rules themselves. In other words these terms and conditions assume as much legal validity and enforceability as other Rules framed by the Government for the grant of nautor lands. If, therefore, the whole contention is viewed from this aspect, it becomes evident that after a Patta is granted by the Government the terms thereof have as much binding on the parties to the Patta as other Rules framed by the Government for the grant of the nautor lands.

40. Now the first contention which arises for our consideration is how the terms and conditions mentioned in the Patta would operate if the authorities concerned resort to the powers to review and revise suo moto the orders passed by the Revenue Assistant under Rule 16, and come to the conclusion that the said order of the Revenue Assistant should be set aside. In our opinion, the arbitration clause which is contained in condition No. 7 of the Patta in general form would come into play in such cases. That condition refers to a question of difference which arises between the Government and the grantee, who are two parties to the Patta. This condition No. 7 is very wide in its ambit and sweep and covers any dispute which is "in any way touching or concerning" the subject-matter of the grant, and therefore even if the concerned authorities arrive at a conclusion that the original order sanctioning the grant passed by the Revenue Assistant under rule i is liable to be set aside it becomes a question "touching and concerning the grant", and should therefore, be referred to an arbitrator under condition No. 7.

41. The Respondents contended that the arbitration clause contained in condition No. 7 of the Patta refers only to the disputes arising from the terms of the Patta and not those disputes which relate to an event which has preceded the grant of the Patta. In this connection our attention was drawn to the saving clause of the condition No. 7 of the Patta which is in the following terms:

Save in so far as the decision of any such matter has been herein before provided for and has been so decided".

Relying upon these words of condition No. 7 (i) It was contended that if a decision on the question whether Patta should have been granted or not is arrived at by the Revenue Assistant under Rule 16, that decision cannot be made

the subject-matter of arbitration under condition No. 7. In this connection reliance was also placed on the decision given by the Judicial Commissioner Himachal Pradesh in Civil Writ Petition No. 9 of 1965 decided on 21st October, 1965. The Petitioner in that case was also granted nautor land in village Rohalty on 7 10-1961. I-I was also granted a Patta and the mutation of the land was sanctioned in his favour on 26-3-1962. After the said mutation was sanctioned, some Zamindars of the village Rohalty filed a review petition against the order granting nautor in favour of that Petitioner. On 5th November, 1963 the Deputy Commissioner, Mahasu passed an order referring the matter of the grant of nautor to the arbitration of the Judicial Secretary, Himachal Pradesh under the arbitration clause contained in condition No. 9 of the Patta which appears to have been granted in that case for horticulture purpose. Pursuant to the reference made to him. The Judicial Secretary entered upon the arbitration and issued notices to the parties. The Petitioner of that case thereupon filed the writ petition challenging the order o the Deputy Commissioner making reference to the arbitration under the above referred condition No. 9. The learned Judicial Commissioner found that reference to arbitration made by the Deputy Commissioner was vague and indefinite. He, however, further observed that assuming that the reference to the arbitration was on the question of original sanction for the grant of Patta, the Deputy Commissioner had no jurisdiction to refer that matter to the arbitration because the arbitration clause indicated an arbitration only with regard to those matters which were mentioned in the Patta and not with regard to the matters relating to the sanction to grant the Patta. Referring to the terms of the arbitration clause, he observed as under:

A perusal of the provisions set forth above clearly indicates that only those matters which are mentioned in the patta and not matters relating to the sanctioning of the nautor itself, can be referred to the arbitration of the Judicial Secretary, under condition No. 9. The words "construction, meaning, operation or effect thereof or of any clause therein" can refer only to the construction, meaning, operation etc. of the Patta, and not of the order, sanctioning the nautor itself. The matter of termination of grant can be referred to arbitration under condition No. 9 if the grantee has failed to comply with, or violated, any terms or conditions of the Patta. The matter relating to the propriety of the order sanctioning nautor cannot be referred to arbitration under that condition. The Himachal Pradesh Nautor Rules lay down a detailed procedure for sanctioning nautor. The Rules provide for appeal, revision and review. I he detailed provisions contained in the

Himachal Pradesh Nautor Rules confirm the view that condition No 9 of the Patta is confined to matters covered by the Patta itself and does not relate to the order sanctioning the nautor.

After anxiously considering the legal position which emerges out of the terms and conditions of the Patta and the Nautor Rules, we find that the contentions raised by the Respondents in this regard, and the view taken by the learned

Judicial Commissioner, cannot be accepted.

42. We find that the saving clause of condition No. 7(i) has reference to the decision of a matter provided in the instrument of Patta itself and not to any decision which is made under the Nautor Rules. The words "has been hereinbefore provided for and has been so decided", which appear in the saving clause, have reference to the instrument of Patta and not to other Rules. Other Nautor Rules are the general rules which are for the guidance of the general public, and the authorities, which are expected to administer the Rules. The conditions mentioned in the Patta, though having the force of Nautor Rules themselves, are obviously binding on the parties to the Patta itself because they amount to a bilateral agreement between the grantor and the grantee. Therefore condition No. 7 which forms part and parcel of the terms and conditions of the instrument of Patta would have r to the rights of those who are parties to this instrument and hence the expression herein:

before which is found used in the saving clause has reference only to what is mentioned in the foregoing portions of the instrument of Patta itself. For this reason the saving clause of condition No. 7(i) operates only with regard to the decision which is required to be made under the terms of the Patta and not under other Nautor Rules. Reference to condition No. 5 of the Patta which is quoted above, shows that if a grantee fails to perform any of the A terms and conditions of the grant the Revenue Assistant can take a decision to terminate that grant and resume the possession of the land. It is such type of decisions which are referred to in the above quoted saving clause of condition No. 7 (i).

Clause (b) of condition No. 7 (i) shows that the question whether the grant should be terminated or whether it hat been rightly terminated, is also expected to be referred to artbitration. Even this clause is wide in its effect because it does not mention the reasons for which the said termination of the grant is or is expected to be made. Clause (b), therefore, is wide enough to cover even those cases where, in exercise of suo moto powers of revision and review, the grant is terminated or is proposed to be terminated on the ground that the order passed by the Revenue Assistant under Rule 16 was bad.

The learned Judicial Commissioner who has decided the above Civil Writ Petition No. 9 of 1965 has not taken into consideration the wide sweep of the words "in any way touching or concerning the grant" appearing in condition No. 7 (I) of the Patta issued in the general form. If in exercise of suo moto powers of review or revision the authority concerned comes to the conclusion that the original order of sanction of the grant passed under Rule 16 by the Revenue Assistant is bad, can it be said that the order passed in review or revision is not an order "touching or concerning" the grant? In our opinion it cannot be so said. Therefore, if the authority contemplated by rules 29 and 30 exercises its s mob powers to review or revise the order of grant originally passed by the Revenue Assistant under Rule 16, and sets aside that order, and if the Government, pursuant to that order passed in review or revision, wants to resume the land in

question, the only remedy with the Government is to invoke the arbitration clause and get the decision of the arbitrator.

43. The position would, however, be different when a private party succeeds in setting aside the order of grant passed under Rule 16, in an appeal or review preferred by him under Rule 28 or 29. In such cases the arbitration clause referred to above cannot be invoked for the simple reason that this clause is for the purpose of settlement of disputes between the grantor and the grantee who are the parties to the instrument of Patta. A stranger who is not a party to this instrument cannot, therefore, be driven to arbitration against wish. The learned Advocates of the grantees contested this proposition and contended that even if a stranger to the Patta succeeds in his appeal preferred under Rule 28, or in his review application preferred under Rule 2 it is not open to the Government to cancel the Patta and resume the land in view of this arbitration clause. Apart from the fact that a stranger to the Patta cannot be bound by the terms of the arbitration clause, we have further reasons, as discussed below, to reject this contention of the grantees.

44. While considering this question the basic fact which requires to be noticed is that every grant of nautor land is subject to the Nautor Rules which existed at the relevant time and that these Rules, though not statutory in character, have the binding force of law. Now, reference to these Rules shows that before passing an order sanctioning the grant under Rule 16, objections of all the relevant Government agencies as well as of the private parties are invited in accordance with the procedure prescribed by Rule 14.

After receiving various reports as regards these objections, the Revenue Assistant of the District is supposed to dispose of application for grant of nautor under Rule 16. Thereafter under Rule 21 the Revenue Assistant is expected to send a copy of the order passed by him to the concerned Panchayat, the concerned Departments, as well as to the residents of the concerned area who have opposed the grant, so that these objectors might get an appropriate opportunity to file an appeal, if they have a grievance. These provisions therefore, show that the order of grant passed under Rule 16 is subject to an appeal which would be preferred to the Deputy Commissioner by an aggrieved party. Now the question is what would happen if during the pendency of an appeal or an application for review, and after the expiry of the period of limitation for the same Patta is actually granted under Rule 18. Answer to this question is provided by Rule 19 which says that subject to the provisions of these rules the grantee shall be bound by the conditions of the Patta. This rule therefore, obviously makes the grant of the Patta subject to other provisions of the Nautor Rules. If, therefore, other provisions of the Nautor Rules make the order of grant of Patta passed by the Revenue Assistant under Rule 16 subject to the final decision in appeal or review, the right acquired by an objector to prefer an appeal or review cannot be defeated by the mere fact that before the decision in appeal or review is given, an actual Patta is granted to a particular grantee.

It is evident that by rules 21 and 28 the Government has represented to the general public that a person who is interested in objecting to the grant of the Patta in favour of a particular party has got a right to challenge the order sanctioning the Patta under Rule 16, as well as the grant of Patta under Rule 18. Therefore, an order passed under Rule 16 or a Patta given under Rule 18 are always subject to the right of appeal or review which could be exercised by the objector. This objector is, therefore, not bound by the terms of the Patta not only because he is not a party to the instrument of Patta, but also because, he holds his own rights independently of the instrument of Patta under the Nautor Rules framed by the Government. In our opinion, therefore, in cases where an objector to the Patta succeeds in his appeal preferred under Rule 28, or in cases in which the reviewing power of the concerned authority is successfully invoked under Rule 29, the grant of the Patta remains precarious and is always subject to the result which is obtained by the objector in his appeal or review. In such cases there is no question of reference to arbitration contemplated by the arbitration clause above referred to.

45. It is in view of the foregoing discussion that the decision given by the Supreme Court in *Mithoo Shahani v. Union of India* (supra) remains to be appreciated. The ratio of that decision is that if the order by which the grant of Patta is sanctioned is itself set aside, then the Patta, being a mere consequence of that grant, would also stand set aside, unless there is anything contrary either in the Rules or in the terms of the Patta. Applying this principle to the two different categories of cases, namely (1) the cases where the original order of grant is set aside by the exercise of suo moto powers of revision or review, and (2) the cases where that order is set aside at the instance of an objector who prefers an appeal or review, we find that in the first category of cases the existence of arbitration clause in the Patta would show a contrary intention to the effect that the dispute should be referred to arbitration, and in case of the second category, no such contrary intention comes for consideration, because the objector is not a party to the instrument of Patta and cannot be bound by the arbitration clause, and therefore, if the order sanctioning Patta passed under Rule 16 is set aside, the Patta itself would fail and would have no legal force.

46. The learned Advocates of the grantees relied upon several decisions to show that once a Patta is granted there comes into existence a completed contract between the Government and the grantee. It was contended that in view of these decisions a Patta granted under Rule 18 is not liable to be cancelled even if an objector succeeds in his appeal or review after the said grant. The decisions which are relied upon were four decisions of Madras High Court and two of Bombay High Court. Madras decisions are in *Periarovclu Reddi v. Royalit Reddi*, reported in ILR 18 Mad 434; *The Secretary of State v. Kasturi Reddi*. (ILR 2 Mad 268) *The State of Madras Vs. Nadimpalli Subbaraju*, and *R Sivaji Rao Saheb Seervai v. Akilandathainmal* (AIR 1962 Mad. 417), while the Bombay decisions are: *Sambhaji Baloji Solankar Vs. The Mamlatdar of Baramati and Others*, and *State of Bombay Vs. Chhaganlal Gangaram Lavar*, .

47. So far as the Madras decisions are concerned, we find that they are no relevant to the points at issue the lands were granted in those cases under the Rules known as "Darkhast Rules" which were departmentally issued by the Government. The question which the High Court of Madras has considered in those cases is whether a Civil Court would have jurisdiction to consider whether a particular grant made by the Government under Darkhast Rules" was properly made or not. The Madras High Court has consistently taken the view that the "Darkhast Rules" being departmental in character, if they were infringed the remedy for such infringement was also departmental, and irregularities in observing those Rules did not constitute any valid ground for interference by civil Courts with the grant of land made by the Government. A fortiori, the Madras High Court has further observed that, if the State Government can make a grant of its land to A or B, the fact that the grant is made to one of them alone, be it not strictly in conformity with the Rules framed for the grant, cannot give a cause of action to the disappointed rival to obtain redress in a civil Court.

These decisions have thus no relevance to the points under our consideration because before us the question is not whether an objector to an application for grant of nautor land has got a right to obtain a grant in his favour. The question is whether the objector has got a right to challenge a particular grant by preferring an appeal or review under the Nautor Rules themselves before an appropriate authority. Right to prefer an appeal or review is not the same thing as a right to obtain a grant in one's favour. It once it is conceded that an objector has under the Rules a right to prefer an appeal or review to an appropriate authority, and that the Patta which is granted in favour of a particular person is subject to these rights under the terms of Rule 19, it necessarily follows that the Patta even if granted cannot defeat the right of an objector to prefer an appeal or review and is always subject to the result of that appeal or review.

48. So far as the Bombay cases are concerned, a Division Bench of Bombay High Court, constituted by Ch CJ and Bhagwati, J. has held in *Sambhaji Baloji Solankar v. The Mamlardar of Baramati*. (supra) that where the Government want to cancel a "Sanad" on the ground that it was got by misrepresentation, the proper procedure to follow is not to take action u/s 211 of the Bombay Land Revenue Code, which vests the power of revision in the State Government and other authorities, but to file a suit for avoiding the contract. In our opinion, this decision is not relevant in cases wherein a right of a third party to challenge the original order of grant by preferring an appeal or review is involved. In the Bombay case the Government tried to invoke the revisional powers vested in it u/s 211 of the Bombay Land Revenue Code on the ground that a grantee of a "Sanad" had obtained it on some misrepresentations. The Court held that if "Sanad" was required to be set aside on the ground of misrepresentation the proper course was not to take action u/s 11 of the Code, but to file a Suit to avoid the contract. In the cases which are under our consideration, we have come to the conclusion that if the dispute is confined only to the grantor and the grantee

the Patta cannot be cancelled without obtaining an award of arbitrator under condition No. 7. As already observed above, this condition No. 7 would not come into operation in cases wherein a third party's right to obtain a correct decision by or an appeal or review is involved because this third party is not a party to the instrument of Patta, and also because the Patta which is granted under Rule 18 is always subject to the provisions of other rules including the provision as regards appeal and review.

The above decision of the Bombay High Court was subsequently considered by a Full Bench of the same High Court in *State of Bombay v. Chhaganlal Gangaram Lavar*, (supra) wherein the said Full Bench which was constituted among others by Chagla, C.J., himself, has taken a view that where a grant has been made u/s 62 of the Bombay Land Revenue Code and a Kabulayat has been taken in pursuance of the said grant under Rule 37 of the Rules, the order making the grant and the Kabulayat can be modified or cancelled u/s 211 of the Bombay Land Revenue Code. The learned Advocate General, therefore put reliance upon this latter decision of the Bombay High Court and contended that the previous decision given by it in *Sambhaji's case* (supra) stands overruled. However, Chagla, C.J., who has recorded both the decisions, has himself explained the previous decision in the following words:

It is true that at page 301 in the judgment which I delivered for the Court (in *Sambhaji's case*) I have stated that there was a complete and concluded contract between the parties and that fact has been emphasized. But when one reads the whole of the judgment, it is clear that it proceeds on the assumption that what was executed by the Petitioner was not a Kabulayat, but that a sanad was granted to him, and in their defence the Government itself referred to the document in question as a sanad and not as a Kabulayat. Therefore, the distinction which the various authorities have made, and to which we have drawn attention, between a Kabulayat executed by the occupant alone and a formal contract entered into by a Collector on behalf of the Governor or the Secretary of State, was never present to the mind of this Bench, and the real decision in that case was, where there is a contract between the State and the subject and the State wants to avoid that contract on the ground of misrepresentation, the proper way to avoid it is by going to a Civil Court and not by setting aside the contract by an administrative order u/s 211.

It is thus clear that even in the subsequent decision given by the Full Bench, the Bombay High Court has persisted in its view that a completed contract between the State and the subject cannot be administratively avoided and should be avoided by filing a suit. This, however, does not in any way detract from the view which we are taking on the validity of a Patta granted under Rule 18 when an object eventually succeeds by preferring an appeal or review in getting the original order under Rule 16 set aside. Moreover, the view expressed by Bombay High Court in the above referred two decisions should now be considered in light of the ratio of the decision given by the Supreme Court in the above referred

case of Mithoo Sahani v. Union of India, (Supra).

49. To summarise our conclusions on this point, we find that:

(1) In cases wherein dispute exists only between the Government and the grantee either on account of the suo moto exercise of powers of review and revision or on any other account, the said dispute should be resolved by reference to arbitration under condition No. 7 of the general I which is equivalent to condition No. 9 of the horticultural Patta.

(2) However, when the original order of grant passed by a Revenue Assistant of the District under Rule 16 is set aside at the instance of an objector in an appeal or a review application contemplated by Rule 28 or 29, the Patta being subject to the provisions of Nautor Rules automatically becomes ineffective as held by the Supreme Court in Mithoo Shahani's case (supra).

50. The next question is who can object to the grant and who can pursue his remedy in appeal or review. The learned Advocates of the grantees drew our attention to the fact that proceedings in appeal, review and revision under rules 28, 29 and 30 are invoked by the authorities concerned at the instance of private parties who are mere busy bodies and who cannot be considered as "aggrieved parties" and therefore, such proceedings should be treated as void and the Patta which is granted to a particular grantee cannot be avoided as a result of such proceedings. They point out that there are several cases in this group which are of this type. It is, therefore, necessary to consider who can raise objections during the original proceedings relating to an application for obtaining nautor land, and who can subsequently pursue these proceedings further in appeal or review. It may be mentioned here that Rule 21, if read with Rule 28, shows that a person aggrieved has got a right to appeal. Rule 29 also shows that power of review can be invoked by a private party on proper application to the authorities contemplated by that rule. Rule 30 which provides for revision, however, does not confer any right on a private party to invoke revisional jurisdiction. Therefore, if such a revisional jurisdiction is invoked by a particular authority under that rule on its attention being drawn by a private party, the action taken under this Rule 30 would be a suo motu action.

51. Now reference to Rule 14 shows that a detailed procedure is required to be adopted by a Revenue Assistant after he receives an application or the grant of a nautor land. This rule is in the following terms:

14. Procedure.-On receipt of an application for the grant of nautor land, the following procedure shall be adopted:

(a) The Revenue Assistant of the district shall cause the application to be entered in the Misal Band Register to be maintained, Tehsil-wise, in the District by the Special Agency in Form "A" appended to these rules. The register file No. shall be marked on the original as well as on the blank application forms whereafter these blank forms shall be filled up by the Special Agency on the basis of the original

application;

(b) The Patwari of the Special Agency shall prepare 3 copies, free of cost, of the Tatiina Shajra attached to the original Nautor application and append one copy thereof with each of the duplicate application forms furnished by the applicant and completed by the Special Agency. The correctness of the duplicate copies of the application form and Tatiina Shajra shall be verified by the Tehsildar of the Special Agency;

(c) The original application shall be retained by the Special Agency and the remaining copies shall be forwarded one each to the Girdawar Kanungo, the Gram Panchayat of the area and the Forest Range Officer of the Territorial Range, simultaneously, inviting their comments;

(d) On receipt of the application the Girdawar Kanungo of the circle shall visit the spot and check the Tatiina Shajra attached with the application. While checking the Tatiina Shajra the Field Kanungo will note the proximity of any forest, road, path, existing cultivation, water channel and public spring, the slope of the land and record a detailed report in respect of trees standing or lying on the land applied for, if any, with particulars of their kind. He shall also make his report on the following points:

(i) the size of the family of the applicant and the size of the holding(s) he owns or possesses in the circle and else where. While the Field Kanungo shall be personally responsible for the accuracy of the particulars of the holding within the circle the particulars of the holding(s), if any, elsewhere should be reported to the best of his information. In support of his report the Field Kanungo shall invariably add except of Jamabandi in respect of the holding of the applicant;

(ii) Whether the plot applied for is suitable for the purpose for which it is intended to be used ; and

(iii) the extent, nature and validity of the objections, if any;

(iv) the existing soil classification of the land applied for and the subsequent classification after grant and also the Land Revenue chargeable thereon ; and

(v) After the above investigation the Field Kanungo shall return the application to the special Agency within one month from the receipt thereof;

(e) The Gram Panchayat on receipt of the application shall issue a proclamation calling on any person who may have any objection to the grant of the Nautor, to make his objection. A period of one month shall be allowed for receiving objections, if any. After the expiration of the said period of one month the Gram Panchayat shall consider the objections and record its report on the existing rights in the land and the objections to its grant, if any, and return the application to the Special Agency within 2 months from the date of receipt thereof;

In case the Gram Panchayat fails to make its report and return the application

within the stipulated period of 2 months, it shall be presumed that the Gram Panchayat has no comments to offer and the application shall be processed further accordingly

(f) The Forest Range Officer shall return the application, within 2 months of its receipt with his comments. His report shall contain the number, kind, girth and value of the trees standing or lying on the land applied for and the gradient of the land with other particulars, if any

(g) On receipt of the reports from the Girdawar Kanungo, the Gram Panchayat and the Forest Range Officer concerned, the Special Agency shall append these reports with the original application and forward the case to the Revenue Assistant of the District with its consolidated report ; and

It shall be the responsibility of the Special Agency to forward the Nautcr application completed in all respect to the Revenue Assistant within 3 months from the date of its institution Provided that the Special Agency shall, upon non-receipt of duly investigated applications within the stipulated period from either the Girdawar Kanungo. The Gram Panchayat or the Forest Range Officer, the Special Agency shall presume that the defaulter has not comments to offer. In such an event the Special Agency shall process the application further itself and complete it within the said period of 3 months.

Note: The Special Agencies for the districts of Mahasu and Kulu shall have the jurisdiction, for the purpose of these Rules in the districts of Kinnaur and Lahaul and Spiti respectively.

This Rule 14 shows that the Revenue Assistant is required to send copies of application for grant of nautor to various agencies of the Government so that these agencies can raise objections to the grant of nautor land. Rule 14 (e) shows that even the residents of the estate can raise objections to the grant. Rule 21 shows that the Revenue Assistant who passes an order sanctioning the grant under Rule 16 should send a copy of his order to the concerned Panchayat in every case in which the resident or residents of the area have opposed the grant so that they may get proper opportunity to file an appeal, if they have a grievance.

52. It was contended that no resident of the area concerned can be said to have any grievance unless he has got a legal right in the land, and the grant of the land in favour of a particular person results in the infringement of chat right. It was contended that the use of the word "grievance" in Rule 21 indicates that it is not every body who can prefer an appeal and, therefore a person, who is a mere busy body and has no right in the land proposed to be granted, and who wants to raise objections only for the sake of raising them, would have no right to prefer an appeal.

As against this, it was contended that any person can raise any objection to an application for grant even though he has no legal right or interest in the land. On

behalf of the Respondents, this contention was carried to the extreme by canvassing view that even if a person has not raised objections during the course of original proceedings for the grant before the Revenue Assistant, he can nonetheless prefer an appeal or review.

53. While considering these contentions, it would be necessary to note that Clause (e) of Rule 14 contemplates a proclamation to be issued by the Gram Panchayat calling upon any person who may have any objection to the grant of nautor to make his objections. If this clause of Rule 14 is read with the provisions contained in Rule 21, it becomes apparent that in every case in which a resident or residents of the area have opposed the grant have got a right to file an appeal against the grant before the Deputy Commissioner. These provisions, in our opinion, therefore, go to establish very clearly that any resident of the concerned area can raise any type of objection against the grant irrespective of the consideration whether he has got a present right in the land which is sought to be granted. The reason behind such a provision seems to be that if a particular estate contains a nauror land belonging to the State, all the residents of the village are interested in that land even if they have got no present legal right in the land. It is obvious that if a particular piece of land belongs to the State it would be a to the public in general and therefore, even if a resident of the concerned area has got no present legal right in the land, he would be expected to have the use of the land in common with the other members of the public. It is for this reason that Clause (e) of Rule 14 cont objections of "any type" to be raised by "any person" and Rule 21 contemplates to be filed by a resident of the area.

54. Shri Sood. who has appeared on behalf of some grantees, put much emphasis on the words "if they have any grievance" appearing at the end of Rule 1 and contended that the word "grievance" which is used in this rule means a legal grievance, and therefore, unless it is shown that a resident- objector has got a grievance in form of the infringement of his legal right, he would have no right to take objection and to prefer an appeal. In support of this argument, he referred to two decisions of the Supreme Court in which the meaning of the expression "aggrieved person" has been considered. These decisions are (1) *Adi Pherozshah Gandhi v. H M. Seervai* AIR 19.1 SC 385 , and (2) *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, .

In *Adi Pherozshalz Gandhi's* case (supra) the question was whether the Advocate General appearing in pursuance of a notice u/s 35(2) of the Advocates Act, 1961 is a person aggrieved. Supreme Court held that the Advocate General is not interested in prosecuting the matter further if he takes the view that the punishment meted out is not commensurate with the misconduct of the Advocate and also because a decision taken by the Disciplinary Committee Cannot necessarily be said to raise a point of public interest merely because the Advocate General feels that it is erroneous or that he himself Would have arrived at a different conclusion. The following are the pertinent observations of the

Supreme Court made on the subject:

From these cases it is apparent that any person who feels disappointed with the result of the case is not a "person aggrieved". He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance.

In this case the Supreme Court has approved of the following observations of Lord Parker, CJ, in *Ealing Corporation v. Jones* 1959 1 QB 384:

...As Lord Hewart C.J. pointed out in 1929 2 KB 440: "But as has been said again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in different statutes which have been enacted alio intuitu. The problem with which we are concerned is not, what is the meaning of the expression "aggrieved" in any one of a dozen other statutes, but what is its meaning in this part of this statute?"

Accordingly, I only look at the cases to which we have been referred to see if there are general principles which can be extracted which will guide the Court in approaching the question as to what the words "person aggrieved" mean in any particular statute.

It is apparent from the above, that the expression "person aggrieved" has to be decided with reference to the statute in hand, and it that is done, in our opinion, Clause (e) of Rule 14 and Rule 21 of Nautor Rules make it abundantly clear that all the residents of the estate, from which the nautor land is proposed to be granted, are the persons interested inasmuch as they have got an interest in the land.

In the next case of *Jasbhai Motibhai Desai v. Roshan Kurnar*, (supra), Sarkaria, J., has further elaborated the meaning of the expression "person aggrieved". He has classified the applicants of the writ of certiorari in three categories, namely (1) person aggrieved, (2) stranger, and (3) busy of meddle some interloper. So far as this last category is concerned, he has observed that the persons belonging to this category are easily distinguishable from those coming under the first two categories because such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity ; while the ulterior intent of some applicants in this category may be no more than spoking the wheels of administration. He has observed that the High Court should do well to

reject the applications of such busy bodies at the threshold. We find that these observations would be of great use even to the officers who are administering the Nautor Rules, so far as the persons who are not the residents of the concerned area and who are mere busy bodies as described above, are concerned.

However, so far as the first and second categories of applicants mentioned by Sarkaria, J., are concerned, the first category consists of the persons whose legal rights are infringed. These persons are undoubtedly those who are aggrieved. But so far as the second category is concerned, Justice Sarkaria has prescribed certain broad tests and one of these broad tests is stated by him as under:

Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

This test shows that the view taken by the Supreme Court even in this latter case is that it is the nature of the statute and the nature of the interest which is involved which can be legitimately be taken into consideration at the time of deciding whether a particular person is a person aggrieved or not.

55. Now, so far as the nature of the Nautor Rules under which the grant of a piece of land belonging to public can be made is concerned, there is no doubt that all the residents of the estate in which the nautor land is situated are interested in preserving the public character and ownership of the land, and therefore all the residents of the estate are interested either in getting the grant of that land or in opposing that grant to a particular person. Under the circumstances, we do not find ourselves able to accept the contention that only that resident of the estate can object who has got a present legal right in the land. It follows, therefore, that the resident who has taken objection on whatever ground to the grant of nautor to a particular applicant

56. The contention of the Respondents, that a person can prefer an appeal or a review even though he has not objected during the course of original proceedings before the Revenue authorities, cannot be accepted because the scheme of the Rules, as evidenced by Clause (e) of Rule 14 read with Rule 21, is that only the person who has objected during the course of the original proceedings can prefer an appeal or review. In other words, the right to prefer an appeal or review arises only in favour of that person who has been vigilant enough to raise an objection during the original proceedings. As already noted above, the Revenue Assistant concerned passes an order sanctioning the grant under Rule 15 only after the detailed procedure contemplated by Rule 4 is complied with. Therefore, if a person sleeps over these original proceedings and awakens to desirability or otherwise of the grant at a later stage, he would have no right of preferring either an appeal or a review. Therefore, this extreme contention of the Respondents that any body can prefer an appeal or review at

any stage must necessarily be rejected.

57. This disposes of points No. 6, 7 and 8. What now remains to be considered in point No. 9 which is raised by the learned Advocate General orally during the course of the hearings of these matters. The point being purely legal in its character, we have heard the learned Counsel of the parties even on this point.

58. The contention of the learned Advocate General is that according to Section 58 of the Constitution (Forty second Amendment) Act, 1976, even pending proceedings are required to be decided in accordance with the amended Article 226 of the Constitution, and therefore, if in case of the proceedings under Article 226, which were pending on the date on which the Forty-second Amendment Act came into force, it is found that the Petitioner had an alternative remedy, sub-Article (3) of Article 226 would come into play, and the writ petition would abate. Similar arguments were advanced even with regard to the writ petitions wherein the Petitioners have invoked Article 227.

59. Now so far as Article 227 is concerned, the position is quite clear because the amended Article 227 has no retrospective effect as held by a Division Bench of this Court in *Ch v. Khazan Singh*, ILR (1977)

60. The question is whether the petitions, in which only Article 226 is involved, and which were pending on the date on which the Forty-second Amendment came into force would abate or not.

61. Now the alternative remedy which is pointed out by the learned Advocate General is of two types, namely (1) remedy by making a reference to arbitration under the above referred Clause 7 of the Patta in general form, and (2) remedy either by way of appeal under Rule 28 or by way of a review under Rule 29. He pointed out that since these two remedies existed in favour of the Petitioners invoking Article 226, on the date on which Forty second Amendment came into force, such petitions should abate.

62. So far as the cases in which Article 226 is involved are concerned, they could be classified into three categories, namely (1) those in which the writ petitions already stood disposed of on the date on which the Forty-second Amendment of the Constitution came into force and Letters Patent appeals against these decisions were pending ; (2) the cases in which a contention has been raised that the definition of the word "resident" is ultra vires inasmuch as the requirement of living in the concerned area or estate from generation to generation is violative of the fundamental rights contemplated by Article 14 of the Constitution, including other cases in which a question about the validity of any of the provisions of the Nautor Rules is challenged on the ground of the violation of any of the fundamental rights under the Constitution ; and (3) the cases in which the right of an objector to prefer an appeal or review is involved.

63. We find that in all the above referred three categories of cases, the petition under Article 226 would not abate on the ground that an alternative remedy was

available to the Petitioner. We proceed to consider the reasons for taking this view.

So far as the first category is concerned, we find that Section 58 of the Constitution (Forty-second Amendment) Act, 1976 does not apply to the writ petition which already stood disposed of on the date of application of the said Act and in which Letters Patent appeal was pending. This view is taken by the above referred Full Bench cases of Bombay High Court in *Shantilal Ambalal Mehta v. M.A. Rangaswamy* 1977 79 BLR 633, and Andhra Pradesh High Court in *Union of India v. Vazir Sultan Tobacco Company Ltd.*, Azamabad, Hyderabad, reported in the Andhra Weekly Reporter 19Th (Vol. XLV-Part 8) at page 233. We agree with this view.

So far as the second category is concerned, it is evident that if a particular provision of the Nautor Rules is challenged on the ground that it is unconstitutional as it infringes some of the fundamental rights under the Constitution, there would be no alternative remedy to the Petitioner concerned before an authority acting under these very Rules because it is an established position of law that an authority created by a particular statute or rule has no competence to decide the vires of the provisions of that statute or rule and also because Article 226(3) which contemplates alternative remedy has no application to the cases where infringement of a fundamental right is involved.

As for the third category, it is evident that an objector who has got a right of appeal or review under the Rules cannot invoke the arbitration clause as discussed by us above, and therefore, it cannot be said that such an objector has an alternative remedy to get redress through arbitration proceedings.

64. The question would still, however, remain as to what would happen to the writ petitions, which were pending on the date on which the Forty-second Amendment Act, 1976 came into force, and which have invoked this Court's jurisdiction only under Article 226 but do not fall in any of the three categories mentioned above. We find that in such cases remedy by way of invoking the arbitration clause as between the grantee and the grantor cannot be considered efficacious. The main reason for this is that one of the parties to the arbitration viz. The State has, in these cases taken an unilateral action in cancelling the Patta without preferring to take resort to arbitration, and it was this action which led to the institution of these writ proceedings. Thus these proceedings being the result of the State action in disregard to arbitration proceedings, it does not lie in the mouth of the State to say that these proceedings would abate because alternative remedy of arbitration is open. It should be noted in this connection that the plea of alternative remedy by way of arbitration proceedings becomes available to the State only if these matters are not disposed of on this preliminary point, and it is held on merits that in cases where the dispute is only between the grantee and the grantor of the Patta, the arbitration clause of the Patta applies and the Patta cannot be cancelled without taking resort to arbitration. Therefore, to say that some of these matters should be treated as

abated on the ground of an alternative remedy of arbitration even before appreciating the legal position arising from the existence of arbitration clause in the Patta, is tantamount to putting cart before the horse. Moreover it should be noticed that, by now, much time has passed during the pendency of these writ petitions. To say at this stage that these Petitioners should invoke the arbitration clause would not be conducive to interests of justice because the arbitration proceedings themselves would involve a very lengthy procedure which, on the face of it, would not give any efficacious remedy to these Petitioners even if these proceedings are taken as providing an alternative remedy to them. These observations are made only in view of the peculiar facts of this group of cases.

65. However, so far as the remedy of appeal and review is concerned, the same cannot be treated as non-efficacious for the simple reason that appellate or reviewing authority would be able to go into the facts of the case and appreciate them properly which is not possible to be done by the High Court exercising its extraordinary jurisdiction under Article 226. It is likely that by this time the remedy by way of appeal or review has become barred by time in most of these cases. However, as held by the Himachal Bench of the Delhi High Court in *Narainu v. Deputy Commissioner, Mahasu* 1970 DLT 15, the authorities concerned can condone limitation on an application being made, showing reasonable grounds for the said condonation. The learned Advocate General has, however, stated before us, rightly and fairly, that in such matters the State will not raise any objection on the ground of limitation. Therefore, we find that in the writ petitions which were pending on the date on which the Forty-second Amendment came into force the remedy by way of appeal or review would be an efficacious remedy and the cases would be disposed of on that basis.

This disposes of all the general points raised in this group of cases. We shall now proceed to consider individual cases in light of this decision.