

(2004) 10 AHC CK 0020
In the Allahabad High Court
Case No : Writ Petition No. 42 (M/S) of 1980

Raghuvir Narain Rastogi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Companies Act, 1956 — Section 617
Land Acquisition Act, 1894 — Section 18, 18(1)
Limitation Act, 1963 — Article 137, 23, 25, 29(2), 5
Payment of Wages Act, 1936 — Section 15
Penal Code, 1860 (IPC) — Section 20, 21, 228
Registration Act, 1908 — Section 10, 11, 12, 14, 15
Representation of the People Act, 1951 — Section 81, 86

Citation : (2005) 2 AWC 1814

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : V.R. Singh, S.K. Mehrotra, P.C. Srimal, K. Nath and I.D. Shukla, for the Appellant; P.K. Khare, P. Chandra and Rajesh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—The short question involved in the present writ petition is that whether the Registrar has got power to condone the delay in pursuance to power conferred by Section 5 of the Limitation Act or in pursuance to any provision contained in Registration Act, 1908 (in short hereinafter referred as Act) in case an application is submitted u/s 73 of the Act beyond the period of limitation provided under the said section?

2. The factual matrix of the case is that the petitioner had entered into an agreement on 1.5.1978 with opposite party Nos. 4 and 5 in respect of sale of House No. 222/2 (ga) situated at Raja Bazar, Lucknow for a sum of Rs. 80,000 and taken advance of Rs. fifteen thousand. After execution of agreement a sum of Rs. 20 thousand was again received by the petitioner. A copy of agreement has been filed as Annexure-1 to the writ petition. The opposite party Nos. 4 and

5 moved an application dated 13.9.1978 before opposite party No. 3, i.e., Sub-Registrar, Lucknow for the registration of agreement dated 1.5.1978. The opposite party No. 3 had issued a notice and directed the petitioner to appear for the execution of agreement. However, after going through the record by order dated 7.2.1979 the opposite party No. 3 had declined to register the agreement. Thereafter, petitioner had returned the amount of Rs. 35 thousand by cheque dated 14.2.1979 along with letter dated 14.2.1979. Instead of accepting the amount opposite party Nos. 4 and 5 had preferred an appeal/application u/s 73 of the Indian Registration Act before opposite party No. 2, i.e., District Magistrate/ Additional District Magistrate, Lucknow on 9.3.1979. In response of application of opposite party Nos. 4 and 5 Misc. Case No. 1 of 1979 was registered for adjudication of controversy in accordance to law. The application dated 9.3.1979 has been filed as Annexure-3 to the writ petition. An application for condonation of delay was also filed along with appeal. In response thereof petitioner had filed his reply dated 7th July 1979 a copy of which has been filed as Annexure-4 to the writ petition. The case was heard on 22.8.1979 by opposite party No. 2 along with application for condonation of delay. The opposite party No. 2 had condoned the delay on payment of cost and also extended the period for registration of agreement twice. Copy of order passed by the opposite party No. 2 dated 12.9.1978 and 3.1.1979 have been filed as Annexures-6 and 7 respectively to the writ petition. Order dated 12.9.1978 shows that the application of Nizamuddin Kudurti (father of opposite party No. 4) was allowed in pursuance to Section 25 of the Registration Act on payment of the cost of Rs. 60 as penalty and the period was extended for four months for the purpose of registration of document, and the Sub-Registrar was directed to register the document. By order dated 3.1.1979 filed as Annexure-7 to the writ petition the period was further extended on payment of Rs. 60 as penalty for a month purported to be power conferred by Section 25 of the Registration Act. Petitioner had applied for certified copy of the order dated 12.9.1978 followed by order dated 3.1.1979 by moving appropriate application but failed to get a copy as appears from averment made in para 12 of the writ petition. Thereafter by impugned order dated 21.9.1979 as contained in Annexure-10 to the writ petition again the opposite party No. 2 had directed the opposite party No. 3 to register the agreement of sale.

3. While assailing the impugned order dated 21.9.1979 as contained in Annexure-10 to the writ petition, petitioner's counsel submits that in pursuance to provision contained in Section 73 of the Act it was incumbent for the private opposite party Nos. 4 and 5 to file an application within 30 days. Section 5 of the Indian Limitation Act is not applicable in the present proceedings. Accordingly the submission is that the order of condonation of delay subject to payment of penalty or cost passed on 12.9.1978 followed by order dated 3.1.1979 as contained in Annexure-6 to the writ petition was without jurisdiction. Accordingly the consequential order dated 21.9.1979 vitiates and not tenable under law. A delayed application could not have been entertained by the opposite parties.

4. The further submission of the learned counsel for the petitioner is that u/s 23 of the Registration Act a document can be presented within a period of four months from the date of its refusal for registration. Section 25 empowers the Registrar to pass an order for acceptance of document for registration. u/s 73 when Sub-Registrar refuses to register a document for execution an application may be moved before Registrar disclosing ground challenging the order of Sub-Registrar. Such application may be moved within thirty days after making of the order of refusal by the Sub-Registrar.

For convenience Sections 23, 25 and 73 of the Registration Act is reproduced as under :

"Section 23. Time for presenting documents.--Subject to the provisions contained in Sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, whether it is appealable, within four months from the day on which it becomes final."

"Section 25. Provision where delay in presentation is unavoidable.--(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in (India) is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate."

"Section 73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.--(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded u/s 71, and the statements in the application shall be verified by the applicant in a manner required by law for the verification of complaints."

5. A plain reading of aforementioned provisions shows that a document should be accepted for registration by Sub-Registrar within four months from the date of its execution. In case the Sub-Registrar refuses to accept the document on

account of delay or for any reason an application for such direction may be submitted to the Sub-Registrar in pursuance to provision contained in Section 25 of the Act who shall forward to the Registrar under Sub-section (2) of Section 23. When a Sub-Registrar refuses to register a document, the party concerned or its agent or representative may within thirty days from the date of such refusal apply to Registrar to whom the Sub-Registrar is his subordinate for the purpose of registration of document. In the present case, admittedly, the agreement was executed on 1.5.1978 application for registration was moved on 13.9.1978 and the Registrar had declined to register the document on 7.2.1979. Application u/s 73 was moved by private opposite parties on 9.3.1979 after lapse of statutory period of one month. Thereafter, twice on payment of cost/penalty time was extended by Registrar and later on by impugned order Sub-Registrar had directed to register the agreement in question. The only question raised by the learned counsel for the petitioner is that after lapse of statutory period of one month the Registrar was not empowered to condone the delay and pass the impugned order.

6. Learned counsel for the petitioner had relied upon various judgments in :

Lachhman Das Arora Vs. Ganeshi Lal and Others, .

Prakash H. Jain Vs. Ms. Marie Fernandes, .

Bandobana Ji Mutalik v. Bhasker Balaji Kulkarni, AIR 1972 Mys 31.

Sakuru Vs. Tanaji, .

Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, .

Chhedu v. Abdul Hasan 1975 ALJ 462.

Tarapada Dey Vs. District Registrar, Hooghly and Others, .

Goodearth Steels Pvt. Ltd., Industrial Area, Orai v.

Commissioner of Central Excise, Kanpur 2004 (22) LCD 1189.

Hind Majdoor Sabha, U.P. Vs. State of U.P. and others, .

7. The case of Lachhman Das Arora (supra) was related to election petition while interpreting the provision contained in Sections 81 and 86 of the Representation of People Act. It was held by Hon"ble Supreme Court that the law of limitation may affect a party harshly but it has to be applied with full vigour. The Court cannot extend the period of limitation on equitable grounds more particularly in the matter of filing of election petition where Limitation Act does not apply. The case of Prakash H. Jain (supra) relates to interpretation of a provision contained in Maharashtra Rent Control Act, 1997 relating to the maintainability of an application after prescribed period. The application was filed by the appellant of the said case for leave to defend proceeding. Competent authority had condoned the delay and allowed the application for leave to defend the election

proceedings. The order of the competent authority was set aside by Hon"ble single Judge of Bombay High Court on the ground that there was no provision in the Act or any other law empowering the competent authority to condone the delay in filing of such application. Against judgment of Bombay High Court a SLP was filed in the Apex Court. Hon"ble Supreme Court in Prakash H. Jain's case (supra) held that a Court does not have got any inherent power to condone the delay in filing proceedings before a Court or authority unless the law warrants and permit. In view of overriding effect of the provision of the relevant act, Hon"ble Supreme Court held that the provision contained in Section 5 of the Limitation Act, 1963 shall not be attracted. Further Hon"ble Supreme Court held that mere fact that such authority deem to be a Court only for limited and specific purpose cannot make it a Court for all or any other purpose to attract the provision contained in Limitation Act. Relevant portion from Prakash H. Jain's case (supra) is reproduced as under :

"We have carefully considered the submissions of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the authority, whether it is Court or not but also on the nature of powers conferred on such authority or Court, the scheme underlying the provision of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the Legislature as well, found expressed therein. There is no such thing as may inherent power of Court to condone delay in filing proceedings before a Court/ Authority concerned, unless the law warrants and permits it since it has a tendency to alter the rights accrued to one or the other party under the statute concerned...."

Again Hon"ble Supreme Court had proceeded to hold as under :

"The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the act, except to the extent indicated therein itself and for that matter has been given an overriding effect over any other provisions in the very Act or any other law for the time being in force, though for enforcement of other remedies of even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not "Court" and the mere fact that such authority is deemed to be Court only for limited and specific purposes, cannot make it a Court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well-settled by innumerable judgments of various Courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas the said thing is not in reality that something, the legislative

enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case the creating of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent authority can by no means be said to be "Court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963."

8. In the case of *Bandobana Ji Mutalik (supra)* a Division Bench of Mysore High Court relying upon the Apex Court judgment in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , held that the provision contained in Section 5 of the Limitation Act shall be applicable to appeal before an appellate authority. Article 137 of the Limitation Act only contemplates application moved in a Court. Accordingly, it has been held that provisions contained in Limitation Act shall be only applicable to a proceedings before a Court and not before statutory authority. In the case of *Sakuru (supra)* the Apex Court again reiterated and held that the provision contained in Limitation Act shall be only applicable to proceedings of a Court and not before authority or other bodies. Relevant portion from *Sakuru's (supra)* case is reproduced as under :

"...It is well-settled by the decisions of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, and *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings...."

9. The case of *Officer on Special Duty (Land Acquisition) and another (supra)* relates to a proceeding under Land Acquisition Act. Hon'ble Supreme Court had while reiterating the aforementioned principles and proposition of law held that Collector/Land Acquisition Officer has no power to condone the delay under Land Acquisition Act while making a reference u/s 18(1) of the Act being not a Court. Accordingly, Section 5 and Section 29(2) of the Limitation Act shall not be

applicable to condone the delay in proceedings u/s 18 of the Land Acquisition Act.

10. In the case of Chhedu (supra) it has been settled by this Court that Registrar while hearing an appeal under the Registration Act does not act as a Court. He exercises appellate jurisdiction not as a Court but as the appellate authority. His functions are quasi-judicial and not strictly judicial. For convenience relevant portion from Chhedu's case (supra) is reproduced as under :

"It has been held in a large number of case's that the Registrar does not function as a Court ; and these cases give additional strength to the conclusion at which I have arrived. These cases are Krishnammal v. Krishna Iyengar ; Queen Empress v. Ram Bal ; Mohimachunder Dhur v. Jugul Kushore Bhattacharji ; Madan Lal v. Ganga Bishun ; Udit Upadhia v. Imam Bandi Bibi ; Manavala Goundan v. Kumarappa Reddy and Nagappa Nayudu v. Pattabhiramayya. In Mohima's case, the observation made was that it is impossible to say that the proceedings of the Registrar, when he inquired whether the document had been executed, are in any sense proceedings of a Court. It was held that they are the proceedings of an Executive Officer vested with the quasi-judicial functions for the limited purposes of the Registration Act."

11. In the case of Tarapad Dey (supra) a Division Bench of Calcutta High Court while relying upon the judgment of Hon"ble Supreme Court held that the Registration Officer acting u/s 23 or Section 25 is not a Court. Calcutta High Court had relied upon a judgment of Allahabad High Court while interpreting the Registration Act. Accordingly it has been settled by the Division Bench of Calcutta High Court is that the provision contained in Limitation Act shall not be applicable and registration is not permissible beyond the period of limitation provided u/s 25 read with Section 23 of the Limitation Act. Only exception considered and proved by Calcutta High Court that in case the document is not presented within prescribed period on account of interim order granted by Court then such period be excluded while counting the limitation for the purpose of registration of document. For convenience relevant portion from Tarapada Dey's case (supra) is reproduced as under :

"Because of the provisions of Section 29(2) of the Limitation Act, 1963 the provisions of Section 5 thereof authorising extension of the prescribed period and of Section 15 thereof providing for exclusion of time in certain cases are available to matters governed by the special Law of Limitation. But even if those provisions are so available, those would apply to matters in or before Courts. As pointed out by the Supreme Court in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, , the scheme of the Limitation Act is that it only deals with application to courts." Even though the powers u/s 5 or Section 15 of the Limitation Act are to be read in a special or local law of Limitation by reasons of the provisions of Section 29(2) of the Limitation Act, that power is exercised by Courts only. A Registration Officer acting u/s 23 or 25 is obviously not a Court and if any authority is necessary for such an obvious proposition, reference may be made to the two old Full Bench decision of the

Allahabad High Court and the Madras High Court in *Udit Upadhia v. Imam Bandi* ILR (1902) All 402 at 404 and in *Krishnamal v. Krishnaiyengar* (1912) 15 Ind Cas 652 at 653. It may also be noted that Section 15 where it is applicable would apply on its terms only to suits and applications for execution of decree and the case at hand relates neither to a suit nor to any such application."

8. But the general principles of law as enunciated in the Maxims "Lex Non Cogit Ad Impossibilia", that is, the law does not compel man to do that which he cannot possibly perform and "Actus curiae neminem gravabit" that is, an act of the Court shall prejudice none, are of universal application and must always be applied for the prevention of miscarriage of justice unless application thereof is clearly barred by express declaration or irresistible implication. We find no such declaration or implication in Section 23 or Section 25 or anywhere else in the Registration Act.... As observed by the Supreme Court in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, , it is a well-established principle of judicial procedure that where any proceedings, are stayed by an order of a Court or by an injunction issued by any Court, that period of limitation laid down by law."

Again the Division Bench of Calcutta High Court while concluding the judgment had declined to extend the period of limitation as under :

"But even if we exclude the entire period during which the interim order was in operation preventing the registration of the award, we would thereby exclude the period from 26.7.1978 till 20.12.1982 only. But even after such exclusion, the award which was made on 28.11.1977 and was presented for registration on 25.11.1983 cannot be said to have been presented within four months as provided in Section 25 of the Registration Act. We must, therefore, hold that the Registration Officer could not admit and was wrong in admitting the award to registration and the registration was therefore invalid and ineffective. We accordingly allow the petition, quash the impugned registration, but make no order as to costs."

12. The case of *Hind Mazdoor Sabha* (supra) relates to power of condonation of delay in a proceeding u/s 15 of the Payment of Wages Acts, 1936 Hon"ble single Judge of this Court relying upon the various judgment of Hon"ble Supreme Court held that the provision contained in Limitation Act cannot be extended to a proceeding under the Payment of Wages Act.

13. The case of *M/s. Goodearth Steels Pvt. Ltd. Industrial Area Oral* (supra) relates to filing of a reference application under Central Excise Act, 1944. A Division Bench of this Court after considering the various Apex Court judgments reiterated the aforementioned principle and held that the provision contained in Limitation Act shall be applicable only to courts not to a proceedings before an authority.

In view of aforementioned proposition of law that provision contained in Limitation Act cannot be extended to a proceedings before the authority or

Tribunal, the present petition seems to be well founded.

14. The office of Sub-Registrar or Registrar does not function as a Court may be gathered from certain provisions of the Registration Act itself. Sub-Registrars, Registrars are appointed by the Government in pursuance to provision contained in Sections 5, 6, 6A and 7 of the Act. Casual vacancies are filled up in pursuance to provision contained in Sections 10, 11 and 12 of the Act. u/s 14 of the Act State Government have been empowered to establish several offices under the Act. The format for the seal of Registering Officers have been provided u/s 15 of the Act.

15. u/s 82 of the Act there is provision for imposition of penalty for making false statement false copies or translation, false personation and abatement. Section 83 empowers the Registering Officer to commence prosecution and Section 84 of the Act provides that every Registering Officer appointed under the Act shall deem to be a public servant. However, Sub-section (3) of Section 84 provides that every proceeding under the Act shall deem to be judicial proceeding. For convenience Sections 83 and 84 of the Act are reproduced as under :

"83. Registering Officer commence prosecutions.--(1) A prosecution for any offence under this Act coming to the knowledge of Registering Officer in his official capacity may be commenced by or with the permission of the Inspector-General, [***] the Registrar or the Sub-Registrar, in whose territories" district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or Officer exercising powers not less than those of a Magistrate of the second class.

84. Registering Officers to be deemed public servants.--(1) Every Registering Officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(2) Every person shall be legally bound to furnish information to such Registering Officer when required by him to do so.

(3) In Section 228 of the Indian Penal Code, (45 of 1860), the words "judicial proceeding" shall be deemed to include any proceeding under this Act."

16. In view of aforementioned statutory provisions the proceedings before such officer shall deemed to be judicial proceeding u/s 228, I.P.C. For convenience, Section 228, I.P.C. is reproduced as under :

"Intentional insult or interruption to public servant sitting in judicial proceeding.--Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

17. However, the Act does not seem to contain any statutory provision, which may declare the officer discharging duty under the Act to be a Court.

In Blacks Law Dictionary, Seventh Edition, the word "Court" defined as under :

"Court 1. A Governmental body consisting of one or more Judges who sit to adjudicate disputes and administer justice a question of law for the Court to decides

"A Court.... is a permanently organised body, with independent judicial powers defined by law ; meeting at a time and place fixed by law for the judicial public administration of justice."

1. William J. Hughes, Federal Practice, Jurisdiction & Procedure, 7, 8 (1931).

"2. The Judge or Judges who sit on such a Governmental body the Court asked the parties to approach the Bench.

3. A legislative assembly in assachusetts, the General Court is the Legislature.

4. The locale for a legal proceeding an out of-Court statement.

5. The building where the Judge or Judges convene to adjudicate disputes and administer justice the lawyers agreed to meet at the Court at 8.00 a.m. -also termed (in sense 5) courthouse."

18. In view of the aforementioned definition as provided by Black's Law Dictionary for the purpose of recognition of a body as Court it is necessary such body must be presided by one or more Judges to provide justice.

19. As provided by Section 84 of the Act, every Registering Officer shall deem to be a public servant but not a Judge or Judicial Officer. It is not necessary that every public servant should be a Judge or Judicial Officer, though a Judicial Officer or a Judge shall be a public servant. A person holding the post of Judicial Officer or a Judge is supposed to engage only to provide justice to the people. Such officer may not have responsibility which is being bore by ordinary Government servants.

20. Section 21 of the I.P.C. defines who shall be public servant. For convenience Section 21 is reproduced as under :

"Public servant".--The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :

First.--(Repeated by the Adaptation of Laws Order, 1950).

Second.--Every Commissioned Officer in the Military, Naval or Air Forces of India ;

Third--Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions ;

Fourth--Every Officer of a Court of Justice (including a liquidator, receiver or Commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take

charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties ;

Fifth--Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth--Every arbitrator or other persons to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh--Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth--Every officer of the Government whose duty it is, as such Officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

Ninth--Every Officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any documents relating to the pecuniary interest of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government.

Tenth--Every Officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose for the ascertaining of the rights of the people of any village, town or district ;

Eleventh--Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election ;

Twelfth--Every person--

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government ;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

21. To understand that a public servant may not ordinarily be Judicial Officer holding Court but a Judicial Officer will always be a public servant is supported by definition of Court of Justice provided by Section 20 of the I.P.C. For convenience Section 20 is reproduced as under :

"Court of Justice".--The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is

empowered by law to act judicially as a body ; when such Judge or body of Judges is acting judicially."

22. Thus, at the face of record to attract the provision of Section 21 the presiding officer should be a Judicial Officer discharging judicial duties alone. That is why Sub-section (3) of Section 84 of the Act provides the application of Section 228 of the I.P.C. for only limited purpose. u/s 228 an action may be taken by the Registrar to punish a person who intentionally offers an insult or cause any interruption to public servant. The purpose of Sub-section (3) is to empower the Registrar to take action against a person who causes insult to the Registrar or interrupt with the proceedings.

23. Under the above aforementioned facts and circumstance and provision of law discussed, the office of Registrar, Additional Registrar or the Sub-Registrar may not be treated as a Court. Accordingly the provision contained in Section 5 of the Limitation Act shall not be applicable in a proceeding under the Registration Act. Section 5 of the Limitation Act categorically extends the power for extension of period beyond the date of limitation provided by the Limitation Act or statute to a Court and not to other authorities. For convenience Section 5 of the Limitation Act is reproduced as under :

"Extension of prescribed period in certain cases.--Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

24. Under the above facts and circumstances, the Sub-Registrar or the appellate authority under the Act though works as public servant but does not discharge duties as presiding officer of a Court. Accordingly, the Limitation Act, shall not be applicable. The impugned order suffers from lack of jurisdiction. Hence, the writ petition deserves to be allowed.

25. In view of above, writ in the nature of certiorari is issued, quashing the impugned order dated 21.9.1979 contained in Annexure-10 to the writ petition passed by opposite party No. 2 in Case No. 1 of 1979 with all consequential benefits. It shall be open to the private respondents to recover the amount paid in advance, in case, it has not been already paid to the petitioner.