
(2002) 03 DEL CK 0068
In the Delhi High Court
Case No : CWP No. 1404 of 2000

Reeta Sahney

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Citation : (2002) 4 AD 432 : (2002) 97 DLT 687

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Arun Kumar Varma, Arun Malik and Minakshi Rani, for the Appellant;
R. Krishnamoorthy, for the Respondent

Judgement

Vikramajit Sen, J.—In this writ petition under Article 226 of the Constitution of India the grievance of the petitioner, namely Smt. Reeta Sahney, is that she has been unfairly and illegally passed over for the allotment of residential accommodation in the campus of Gargi College (Respondent No. 2). It is her contention that she is the senior most in the teaching faculty of Gargi College, having been in the service of the College for almost 35 years. Her grievance is that she has been denied allotment on the specious ground that she owns residential property within a radius of ten kilometres from the College and stand disentitled under the College Scheme. Attention has been forcefully drawn on her behalf to a notice dated 7.11.1991 calling upon the members of the staff to furnish an affidavit stating that - "I or my spouse do not own a house or has acquired one and/or power of Attorney arrangements within a radius of 10 Kms. from the College." Mr. Varma Learned Counsel for the petitioner, has contended that the College cannot be permitted to approbate and reprobate inasmuch as if an acquisition of property by means of a "power of Attorney arrangement" is considered sufficiently relevant for allotment of residential quarters, it perforce must logically follow that a person who has sold property by means of a similar arrangement, should not be considered as having been disqualified from the benefits of the Scheme. It is further emphasised on behalf of the petitioner that

Chief Justice R.S. Narula (Retd.), whose legal acumen and eminence cannot be doubted, had pointedly distanced himself from the impugned decision of the Governing Body; his dissent has been recorded in the minutes. This decision was taken after virtually holding an inquisition against the petitioner. She had categorically stated that she was neither the owner of the house nor has acquired one under power of Attorney arrangement within a radius of ten kilometres from the College. The recommendation of the House Allotment Committee was accepted by the Governing Body at its 140th Meeting held on 23.2.2000. The relevant minutes of the Meeting are as follows:

"Item 2. As desired by the GB, the principal requested Dr. Reeta Sahney to submit the various documents for placing before the GB in connection with her application for allotment of staff quarters.

The GB accepted the recommendations of the House Allotment Committee as given under. Hon"ble member Justice R.S. Narual gave his dissent.

Recommendation of the House Allotment Committee:

After going through all the papers submitted by Rs. Reeta Sahney and those available with the College and after taking into consideration her statements before the GB on 15.11.1999, the Committee is convinced that Dr. Reeta Sahney is not entitled for allotment of a flat in the College premises in view of her owning a flat No. C-16, Masjid Moth-I and recommends that the vacant flat may be allotted to the next eligible candidate, Dr. Prem Khullar.

2. Mr. R. Krishnamoorthy, the Learned Counsel for the Respondent College has stingily argued that the present writ petition ought not to be entertained, firstly for the reason that the College is not amenable to the extraordinary jurisdiction of this Court. Reliance has been placed on the decision in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, . An identical objection was also raised before me on behalf of the Centre for policy Research in CWP 5928/2000, and Indian Council for social Science Research in CWP 4465/2001. While disposing of these petitions, this objection was rejected by me as I had found a Restatement of the law contained in U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors., . The relevant portions of this erudite and perspicuous judgment are as under :

"The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction there under though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, it was submitted before the Constitution Bench that an award u/s 10-A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under (at p. 429 of AIR):

"The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose - even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person". But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of his extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."

In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, another Constitution Bench had to say as under (at pp.1423 and 1224 of AIR):

"It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, Therefore, debarred by Article 14 from acting arbitrarily. It was, Therefore, under an obligation to state to the Court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the Court, the Court would presume that it had no valid reasons to give and its action was, Therefore, arbitrary. The learned counsel relied on the decisions of his Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, : Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, .* The learned Attorney General, on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to be subjected to judicial review. He relied on *O'Reilly v. Mackman*, 1982 (3) All ER 1124; *Davy v. Spelthorne* (1983) (3) All ER 278; *I Congress del Partido*, (1981) (2) All ER 1064; *R. v. East. Berkshire Health Authority* 1984 (3) All ER 425 and *Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .* While we do find considerable force in the contention of the learned Attorney General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of Constitutional Law, Administrative Law and public Law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the

technical rules which have hampered the development of the English Law. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, a two Judge Bench of this Court was considering the question of "issued of a writ of mandamus or writ in the nature of mandamus or nay other appropriate writ of direction or order directing the appellant-Trust and its Trustees to pay to the respondents their due salary and allowance etc. in accordance with the Rules framed by the University and to pay them compensation under certain Ordinance of the University". The High Court before which the issue was raised held in favor of the respondents. This Court noted that the essence of the attack on the maintainability of the writ petition under Article 226 by the appellant was that it being a Trust registered under the Bombay public Trust Act was managing the college where the respondents were employed was not amenable to writ jurisdiction of the High Court. In other words, the contenting was that Trust being a private institution against which no writ of mandamus could be issued. In support of the contention, the appellant referred two decisions of this Court: *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, and *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, . This Court, however, distinguished those two decisions and said that the facts before it were different and that there was no plea for specific performance of contractual service by the respondents now in the case before it. Respondents were not seeking a declaration that they be contained in service and they were not asking for mandamus to put them back into the college. But they were claiming only the terminal benefits and arrears of salary payable to them. The question thus was whether the Trust could be compelled to pay by writ of mandamus? The Court noted the observations of Subba Rao, J. in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, as under (at pp. 84 and 85 of AIR):

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever ti is found. The Constitution designedly by used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised, It can issue writs in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy form them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like Indian functioning under a federal structure. Such a construction defeats the

purpose of the article itself."

The Court also noted the observations of this Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, as under (at 1969) 1 1309-1310 of AIR):

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statutes under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibility. (Of. Halsburi's Laws of England, 3rd Ed. Vol. II p. 52 and onwards).

The Court then said *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvana Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :

"The term "authority" used in Article 226 in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental, rights. The words "any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

And finally it said as under *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvana Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :

"Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law. Professor, De Smith states: To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. "We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, Therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], this Court speaking through a Bench of three-Judges said (at p. 469 of AIR SCW) :

"The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writ provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose." The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , this Court in paragraph 102 had pointed out that the difficulty will lie in demarcating the frontier between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately purposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta and another Vs. Union of India and others*, ."

In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and, Therefore, the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warrant and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of Article 367 unless the context otherwise

requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "person" u/s 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged the High Court will step in to protect him be that wrong be done by the state, an instrumentality of the State, a company or a co-operative society or association or body of individual whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or nay other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Courts has laid down certain quid-lines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guide-lines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial "bull in china shop" in the exercise of its jurisdiction under Article 226."

3. In All India Sainik Schools Employees Association v. defense Minister-cum-Chairman Board of Governors. Sainik Schools Society, New Delhi and Ors. (1989) Supp. 1 SCC 205 the Hon"ble Supreme Court gone to the extent of placing the School in the category of the "State" within the meaning of Article 12 of the Constitution. In Francis John Vs. Director of Education and Others, , the Apex Court held that even a private school "which receives aid form the Government under the Grant-in-Aid Scheme was found to be amenable to writ jurisdiction." No controversy on this issue now remains, also in view of the decision of the Constitution Bench of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , in which it had been opined that in construing the word "authority" used in Article 226 of the Constitution a liberal approach was called for. The words "any person or authority" used in Article 226 of the Constitution was held not to be confined only to statutory authorities and instrumentalities of the State but to all persons or bodies performing a public duty. It was specifically held that educational institutions discharge public duties irrespective of their receiving aid form the State. In view of the spectacular advances made by the Hon"ble Supreme Court in this realm of the law it is most unfair on the part of the learned counsel for the Respondent College to sustain or buttress his argument on a decision which is already a quarter-century old and has repeatedly been considered by the Apex Court in subsequent decisions. In this analysis this Court indubitably has the power to issue writs to the

Respondent College.

4. The next preliminary objection raised on behalf of the Respondent College is that disputed questions of facts have arisen in the present writ petition and, Therefore, it ought not to be entertained. This objection is equally without any merit. It was raised in the *Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others*, and was rejected in the following words:

"In so far as the submission made by learned counsel for defendant No. 6 that a finding of fact could not be interfered with in a writ petition by the High Court is concerned, by and large no exception can be taken thereto. The rule in this behalf, however, is not inflexible but has exceptions recognised by judicial decisions which being well-known are not necessary to be recapitulated. From instance this rule will not apply if a finding is arbitrary or based on no evidence or is such that no one properly instructed in law could have given it the same being in the teeth of some statutory provision or in ignorance of binding precedents. In our opinion, the instant case is one which falls within the exception to the said rule."

5. Similarly in *Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others*, , questions of law and facts arrived at on the wrong interpretation of a provision was held to be open to correction by the High Court. The reliance of Mr. Krishnamoorthy on *Life Insurance Corporation of India and Ors. v. Asha Goel (Smt.) and Anr.* (2001) 2 SC 160 is clearly misplaced. After considering its previous decision in *Mohammed Hanif Vs. The State of Assam*, ; *Banchhanidhi Rath Vs. The State of Orissa and Others*, ; *Smt. Rukmanibai Gupta Vs. Collector Jabalpur and Others*, , *Food Corporation of India and others Vs. Jagannath Dutta and others*, , *State of Himachal Pradesh Vs. Raja Mahendra Pal and Others*, the Apex Court observed as under :

"The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long-drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then

the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised, then a writ petition is not an appropriate remedy."

6. While referring to *State of West Bengal Vs. Atul Krishna Shaw and Another*, , Mr. Krishnamoorthy has conveniently lost sight of the use of the word "normally" which is indicative of the position that a total ban does not exist on the consideration of controverted facts in proceedings under Article 226 of the Constitution. Equally, Mr. Krishnamoorthy's reliance on *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, is of no avail since what was deprecated by the Hon'ble Supreme Court was the exercise of the appellate jurisdiction in writ proceedings under Article 226 of the Constitution. No doubt, the Apex Court had observed in AIR 1997 993 (SC) , that if disputed questions of facts were involved the writ petition should be dismissed at the threshold; however, this would apply where the Court was convinced that in disposing of the writ petition it would have to adjudicate and decide upon the controverted facts. For the same reason, reliance on *Board of Muslim Wakfs Vs. Smt. Hadi Begum and others*, , does not advance the case of the Respondent College. Normally, the writ Court steers clear of disputed questions of facts; or time-barred claims, or pleas where an alternative remedy is available. But these are self-imposed jurial restraints, open to variance in any given case. While exercising writ powers under Article 226 there are no fixed frontiers. The Court can interfere wherever and whenever it feels impelled to do so on the call of justice, equity and fair play; provided this decision is not perverse, capricious or arbitrary. The jurisdiction is sans constraints. Simply stated this is because Article 226 of the Constitution vests "extraordinary powers" in the High Court. The second objection is also without merit and is rejected.

7. This brings me to the pivotal question in dispute. The Respondent College has adopted the view that the execution of the Will, agreement to Sell and Special Power of Attorney etc. does not have the effect of divesting the petitioner of ownership of Flat No. C-16, Masjid Moth-I, New Delhi (for short the said property). Although, there has been some debate on the genuineness of this transaction, the gravamen of the argument on behalf of the Respondent College is that the petitioner remains the owner of the said property as no Sale Deed has been executed by her. Therefore, it is contended by Mr. Krishnamoorthy, she is not entitled to the allotment of a House in the College Campus.

8. In *Harbans Singh v. Shanti Devi*, 1977 RLR 487 a Division Bench of this Court opined, after considering the provisions of the Contract Act including Section 202 thereof, that if a person owning a property executes an Agreement to Sell in favor of a lady, and executes an irrevocable power of Attorney in favor of her husband, then he cannot cancel or revoke the power of attorney as that would prejudice the interest created in the property. Therefore, the Court recognized

that rights in property can be created by these documentary devices. S.S. Jain J. of this Court in Rakeshwar Narain Vs. Sarla Sarin, has held as follows:

"This interpretation of the word "owner" has been accepted by Hon"ble Supreme Court in Shanti Sharma and Others Vs. Ved Prabha and Others, . Under the Delhi Rent Control Act, the word "owner" occurring in clause (e) of the proviso to Section 14(1) is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined, who is not an owner but who holds the property for the benefit of another person. A landlord as defined, who is holding the property for himself and for his own benefit and not for the benefit of another person is certainly the owner/landlord. This is the view which has already been taken by the Court in Kanwal Kishore Chopra Vs. O.P. Diwedi and Another, ."

9. The learned Single Judge had accordingly come to the finding of law that a person in whose favor a power of Attorney, will and Agreement to Sell etc. had been executed had acquired ownership rights in the property thereby enabling him to seek the eviction of the tenant, not as a landlord of the property, but as its owner. My Learned Brother Hon"ble Anil Dev Singh has, in Kuldeep Singh Suri v. Surender Singh Kalra, 1998 4 AD (Del) 469, repelled the argument that such documents violated public policy, and observed as follows:

"It is a matter of common knowledge that in all sub leases executed on behalf of the president of India such like restrictive Clauses have been incorporated. It is also a matter of common knowledge that due to such like restrictions the power of attorney sales in thousands have been effected. If the instant transaction is held to be illegal then in that eventuality thousands of such transactions on the same token would have to be declared as illegal. This would cause colossal loss and misery to the vendees. Though both the vendors and the vendees are in pari delicto, the vendors would be making capital out of their breach by getting back their properties which over the years have appreciated astronomically. It would be wholly inequitable to declare such agreements being vocative of perpetual sub leases. Learned counsel for the plaintiff contended that the fetter imposed by clause 6 of the perpetual sub lease Ext. D-3 is meant to protect public interest as the land in Delhi has become a scarce commodity and Therefore, any violation of the same would not only give impetus to the illegal sales but would also be conflict with public policy."

10. In Sushil Kanta Chakravarty Vs. Rajeshwar Kumar, , my Learned Brother Hon"ble Vijender Jain J. had occasion to consider the legal efficacy of such documentation in proceedings u/s 14(1)(e) of the Delhi Rent Control Act. This provision of law enables only the owner of residential property and not its mere landlord to seek the eviction of the tenant for the owner's bona fide need. Reliance was placed in that case on the following passage from the Apex Court's decision in Shanti Sharma and Others Vs. Ved Prabha and Others, :

"The word "owner" has not been defined in this Act and the word "owner" has

also not been defined in the Transfer of property Act. The contention of the learned counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing there upon. Ordinarily, the concept of ownership may be what is contend by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the person who hold properties will only be lessees or the persons holding the land on some term form the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term "owner" in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But as the same time if has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, what appears to be the meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land ins taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term "owner" as is contemplated under this section."

11. The learned Single Judge construed the word "owner" occurring u/s 14(1)(e) of the Act as meaning something more than a tenant.

12. All these judgments have gone into the question in great detail. This genre of conveyance documents have thus been accorded judicial approval, albeit as something less than absolute title. These documents also bestow rights on the transferee beyond the protection of mere possession u/s 53A of the Transfer of Property Act. However, it is the contention of Mr. Krishnamoorthy that the Hon"ble Supreme Court has preferred a contrary view. He has relied on the decision in State of U.P. v. District Judge,. It should not be lost sight of that the circumstances prevailing in the case were relevant for an altogether different legal scenario, viz whether the land possessed by a third party under a license/ lease etc. could still be treated as in the ownership of the titular holder. It was in this context that the Hon"ble Supreme Court found that unless a Sale Deed is available, the land in question can be taken into account to compute the extent of the holding of the transferor. It would not be appropriate to apply this ratio to the facts of the case in hand.

13 By going into the question of the legal efficacy of the documents executed by the petitioner in favor of ms. U. Sikka, who has filed an affidavit in these proceedings, this Court is not ruling on the ownership of the property. The

general rule unquestionably is that a Sale Deed alone can fully and undisputedly transfer the property; it constitutes a document of title. The controversy before this Court in the present writ petition is whether a petitioner is disentitled from claiming the benefit of allotment of residential quarter by the College. It was in the context of land acquisition proceedings the Hon"ble Supreme Court has opined that only a Sale Deed can confer or convey rights of ownership. This, however, is an altogether different question to that which prevails in the present petition. Since an Agreement to Sell, Will and power of Attorney have been considered by several Benches of this Court as sufficiently acceptable vestiges of "ownership" to sustain an eviction petition on benefit need, a fortiori, this manner of conveyance must be accepted by the Governing Body of the Respondent College for as for the limited question of entitlement of College accommodation. Thus there is substance in the petitioner's argument that she stands divested for the said property is also supported by the view of the Respondent College itself, in that it had asked its staff to file an affidavit stating that the individual staff did not own property on power of attorney basis. This would not be necessary if the College did not contemplate that a staff member would not be entitled for allotment of residential quarters if such person owns property on the basis of such documents. It is illogical for the College to ignore the converse position, viz that if property had been sold by a staff member on power-of-attorney basis, such person would be entitled to allotment of College accommodation.

14. Since the basis, understanding and premise on which this issue was discussed and decided upon by the Governing Body of the College, viz. that the petitioner continues to be the owner of the said property despite her having executed a power-of-attorney etc, in favor of a third party namely Mrs. Sikka, it would not be imperative and essential for this Court to go into the disputed questions of facts. It would be appropriate, Therefore, to direct the Governing Body of the Respondent College to take a fresh look at the controversy by assuming that documents such as powers-of-Attorney, Will, Agreement of Sale etc. divest ownership in the property in question. It is impracticable for and a far too narrow and restricted legal understanding for the Governing Body to adopt the view that it is only on the execution of the Sale Deed that the proprietary rights and interests in the property stand conveyed. There is no reason to believe that the Governing Body shall not review the matter with an open mind. This is especially so since learned counsel for the petitioner has, on instructions, very fairly not processed the Contempt petition bearing CCP No. 125/2000. The Governing Body is expected to take a fresh decision within forty five days from today.

15. The writ petition is disposed of in these terms, leaving the parties to bear their own costs. CMs 2361/2000 & 5123/2000 in CWP 1404/2000

16 In view of the disposal of the writ petition no orders are necessary in these applications. The applications are accordingly disposed of.