

(2010) 12 AP CK 0047

In the Andhra Pradesh High Court

Case No : W.A. No. 1407 of 2000 and WA (SR) No. 102605 of 2000

State of Andhra Pradesh and Another

APPELLANT

Vs

M/s. J.K. Traders of Ramakrishna

RESPONDENT

Date of Decision : 31-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Commissions of Inquiry Act, 1952 — Section 3, 3(1)
Constitution of India, 1950 — Article 19, 19(1), 21, 226, 294
Constitution of Trinidad and Tobago, 1962 — Section 6
Criminal Procedure Code, 1973 (CrPC) — Section 357
Evidence Act, 1872 — Section 74, 78
Hyderabad City Police Act, 1348 — Section 22, 22(3), 23, 26, 26(5)
Limitation Act, 1963 — Article 113, 72, 14

Citation : (2011) 2 ALD 580

Hon'ble Judges : P. Durga Prasad, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : S. Sriram, Spl. Govt. Pleader, General in W.A.No.1407/2000, for the Appellant; M.R.K. Chowdhary in W.A.No.1407/2000, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—WA No. 1407/2000 under Cl.15 of the Letters Patent by (1) State of Andhra Pradesh, represented by its Chief Secretary, Secretariat Buildings, Hyderabad; (2) District Collector and District Magistrate, Hyderabad District, Hyderabad and (3) Commissioner of Police, Hyderabad, is directed against the judgment/order dt. 28-8-2000 allowing WP No. 15050/1993 by the learned single Judge of this Court awarding compensation of one crore rupees for the damage of the property belongs to the writ Petitioner on the aftermath of assassination of late Rajiv Gandhi.

2. To put very shortly, the essential admitted facts, which give rise to filing of the writ petition, are thus:

3. On the wide spread news about assassination of late Rajiv Gandhi, the then

Prime Minister of this country on 21-5-1991, large scale violence erupted throughout the country including in the State of Andhra Pradesh, and twin cities of Hyderabad and Secunderabad on the night of 21-5-1991, where large scale destruction of property, private and public, in different parts of the State. On coming to know about the incident of assassination and since Sri N.T. Rama Rao was the leader of opposition, the Manager of Ahwanam Hotels, Mr. Ramanaiah expressing fear of possibility of some attack on NTR Estates at Abids reported to the police of Abids Police Station for providing necessary protection to safeguard the properties. According to the Commissioner of police-third Respondent, Inspector of Police, Abids Police Station informed about the non-availability of police force at the police station, but around 23-30 hours, the then Commissioner of Police instructed Ramesh Kumar, S.I. of Abids Police Station to deploy police force at the house of Sri N.T. Rama Rao and also at N.T.R. Estates, Abids. Accordingly, police picket was posted at the residence of Sri N.T. Rama Rao at Abids. According to the Petitioner, the police could not move in the matter and delayed the steps to be taken to protect the interests of NTR Estates including Ramakrishna 70 MM theatre. In the meanwhile, about 150 persons had gathered outside the theatre and while they were making attempts to enter into the N.T.R. Estates, Ramanaiah, Manager of Ahwanam Hotel passed on the information to various persons but could not receive any help from anyone especially from the police. Even police who came to the spot did not take steps to prevent the damage to N.T.R. Estates and played a second fiddle to the men in power and the mob gathered there were belonging to the Congress Party workers caused extensive damage to the theatre. The police did not take any positive action to prevent from causing damage to the theatre though it could have been possible. After the damage was caused, the Commissioner of Police deputed one Mr. Siva Shanker, Additional Commissioner of Police to enquire into the situation leading to the damage of the theatre. He conducted personal enquiry and submitted his report finding the police officers guilty of dereliction of duties and they have irresponsibly behaved in preventing the property in question. The Government of Andhra Pradesh appointed a Commission of Inquiry u/s 3 of the Commission of Inquiry Act, 1952 consisting of a single member viz., Sri Justice M.R.A. Ansari, a retired Chief Justice of Jammu & Kashmir High Court, through G.O. Ms. No. 511, General Administration (Genl.B) Department dt. 22-8-1991 as one-Man Commission to enquire into the widespread incidents of violence involving destruction of properties occurred in several places in Andhra Pradesh following the assassination of Sri Rajiv Gandhi in Tamil Nadu on the night of 21-5-1991. The Commission submitted its report to the Government on 20-6-1992 with its findings in terms of the reference made to it. One Man Commission found that the violent reaction did not lead to attack on public property as generally happened but to attack on private property belonging to the members of the opposition parties in the State, especially Telugu Desam Party. According to the Petitioner, the Commission found guilty of the police for dereliction of duty in preventing damage to the property in NTR Estates. The Commissioner of Police also found guilty of not taking action on the basis of the

report of the Additional Commissioner of Police, Siva Shankar. The Petitioner got the damage suffered was assessed through Insurance Loss Assessor. Based on which, the District Collector & District Magistrate, Hyderabad issued a certificate dt. 12-11-1991 certifying that the Petitioner suffered a loss to a tune of Rs. 1,51,50,000/-. Complaining the inaction on the part of the police, the Petitioner filed the writ petition contending that the maintenance of law and order is the primary duty of the State and while enforcing law and order, prevention of crime is a primary duty of the State. Thus, the police and the State have totally failed to give protection to the property of the Petitioner and in spite of approaching the police suspecting that unruly hooligans may took the advantage of the situation under their control and may ransack the property belongs to the opposition party leader, the police allowed the unruly hooligans in ransacking the N.T.R. Estates and set fire to it. As it is a violation of the fundamental right as well as constitutional right, the Petitioner is entitled to compensation for the loss suffered by him on account of the inaction on the part of the police authorities.

4. A counter-affidavit has been filed on behalf of the State of Andhra Pradesh by Special Officer (Law & Order) to Government of Andhra Pradesh, General Administration Department, Hyderabad stating that news about the assassination of Sri Rajiv Gandhi was received around 11 PM on 21-5-1991. The grief stricken people carried away emotions came out into streets to protest against the incident in several parts of the State. Unsocial elements indulged in some violent acts of arson and caused damage to private and public properties. Immediately, on receipt of the news, the State Administration had swung into action and a Special Control Room was opened at State Headquarters by 11 PM on 21-5-1991. It functioned continuously under the direct and personal supervision of the Chief Secretary. A core group of Senior IAS Officers was also drafted to monitor the law and order situation in all the Districts. The Collectors and District Magistrates were instructed over telephone personally from 11 PM onwards for taking all precautionary measures and for effective maintenance of law and order. The Director General and Inspector General of Police contacted all the senior police officers and gave instructions in that regard. The Army was called in and Flag march was arranged in selected places of Hyderabad on 22-5-1991. The situation which was sufficiently grave on the intervening night of 21/22-5-1991 was effectively brought under control. An Official Committee was constituted with Sri Sarjit Ray, IAS as Chairman with three members to assess the damages caused to the private and public properties and to make suitable recommendations for relief. The Committee assessed the damage and submitted its report on 17-7-1991. Simultaneously, Sri Justice M.R.A. Ansari, a Retired Chief Justice of Jammu & Kashmir has been appointed as One Man Commission under the Commission of Inquiry Act, 1952 to inquire into the incidents following the death of Sri Rajiv Gandhi. The Committee, which assessed the damages, has reported a total number of 3017 cases of damage to private property and estimated the total value of damages at Rs. 7.39 crores. The Committee has similarly reported 170 cases of the damage to public property, the estimated

total damage of which is Rs. 1.62 crores. The Government on examining the recommendations of the Official Committee, which assessed the loss, issued orders in G.O. Ms. No. 497, General Administration (General.B) Department, dt. 12-8-1991 extending relief in different category of cases. Exgratia as a grant was sanctioned and paid in cases of petty shops with annual business turnover upto Rs. 20,000/-. Approximately an amount of Rs. 50 lakhs was incurred by the Government towards payment of exgratia as a grant only. Concessions were extended to the damaged larger business establishments like rice mills/hospitals/petrol bunks/cinema theatres, but no exgratia relief will be paid to such establishments. They were granted the following facilities:

- (a) Waiver of Sales-tax/excise duty for the period during which the establishment remained closed due to damages;
- (b) Deferment of collection of arrears of tax due from the establishments till 31-12-1991;
- (c) Loans shall be arranged by the collectors from Financial institutions at concessional rates if necessary by extending interest subsidy up to 50% which shall be borne by Government;
- (d) Interest-free margin money equal to 20% of the loan amount;
- (e) The total amount of margin money shall not in any case exceed Rs. 1. 00 lakh per unit;
- (f) The margin money requirements be assessed after deducting the insurance compensation received/receivable by the affected unit;
- (g) Steps offered to be taken to get the insurance claims of the affected establishments expedited by the Collectors concerned;
- (h) The margin money will be recovered in five equal annual instalments with one year moratorium;
- (i) The claim of the victims required to be screened by the Collectors and District Magistrates who shall verify the insurance claims received/receivable and determine the loan amount;
- (j) The Commercial Tax Department is to take judicial notice to closure of business establishments, which have been destroyed or damaged in the riots.
- (k) The ceiling on interest free margin money loan will be Rs. 20 lakhs in case of cinema theatres.

5. Number of officers in Police Department were kept under suspension, pending enquiry, and the memorandum of A.T.R. (Action Taken Report) was placed on the house on 18-12-1993. The Petitioner-theatre was granted Rs. 20 lakhs interest free loan and also certain other benefits. It is further stated that Sri N.T. Rama Rao, the father of the writ Petitioner filed WP No. 167/1993 before the Supreme Court seeking similar relief. (The same was dismissed for non-prosecution on

1-11-1996). There is no failure on the part of the District Collector, Hyderabad and Commissioner of Police, Hyderabad, who are part of the government machinery since they have taken all steps and measures to control the violence and within few hours the violence was curtailed. While denying the contention of the Petitioner that the State is liable to pay compensation to the extent of full loss as assessed by the Government, the Respondents submitted as follows:

(a) Every citizen is responsible for the protection of his own life and property. The State cannot give guaranteed protection to every citizen in respect of these in all circumstances as such a guarantee is not feasible practically. But, however, in this case, the government has taken all steps to prevent the violence and within few hours, the situation was under control.

(b) In an economy like ours where risk can be covered under insurance, the very fact that insurance is available would indicate that the state would not be responsible for hundred per cent protection for individual life, and property. At the same time, it is not denied that the State has no objection to maintain law and order. In view of the vast size of the country and the different fissiparous forces, it is not a practical proposition to expect the state to maintain a man to man cover to watch the life and property of every citizen. The citizens also shall observe their fundamental duties.

(c) If any theory that the State is liable to pay compensation for any damages suffered by an individual is to be accepted, the burden on the rest of the community will be enormous and the State will have to impose an unbearably heavy burden of taxes and rates on other normal citizens who safeguard or insure their own properties. This will be iniquitous.

(d) If the argument that the State is responsible to pay compensation for any damages suffered by an individual on account of a law and order problem is logically extended, the State would be liable to make good to the individual even the losses suffered on account of their or any other acts of individuals which is not a practical proposition.

(e) Whatever ex gratia is paid is by its very nature "out of grace" on a humanitarian consideration being paid to tide over the immediate crisis and is in no way in the nature of compensation.

6. In the additional affidavit filed by the writ Petitioner on 10-4-2000, it was stated that the District Collector & District Magistrate, Hyderabad District, issued a certificate that the Petitioner was attacked during the disturbances and the actual loss sustained by the Petitioner was assessed at Rs. 1,57,50,000/-. The Commission of Inquiry was of the view that the workers of the Congress Party and anti-social elements were responsible for the several incidents although no leader of the Congress Party had organized or instigated various acts of violence. In spite of acceptance of the report of the Commission of Inquiry by the Government after discussing it in the Legislative Assembly and in spite of Collector assessing the damage suffered by the Petitioner in connection with the

riots in question, the Government did not take any steps to pay compensation as demanded by the Petitioner. The Petitioner has not received any amount from the insurance company as some of the employees of the Insurance Company filed a writ petition and obtained stay of consideration of the claims.

7. In the additional counter-affidavit filed on behalf of the second Respondent, it was stated that the Collector had issued a certificate to the Petitioner for availing the benefits of G.O. Ms. No. 1509, Revenue (CT.III) Department dt. 1-10-1991, sanctioning relief to the victims who suffered loss of property in the violent incidents and to arrange for loans by the Collectors from Financial Institutions at concessional rates. The Government has sanctioned a sum of Rs. 20 lakhs towards interest free margin money loan in terms of G.O. Ms. No. 1509 as a special case to the Petitioner, vide Government Memo No110647/CT.III dt. 7-3-91, and the same was drawn and paid by the Commercial Tax Officer, Sultan Bazar Branch, Hyderabad. The Entertainment Officer, Sultan Bazar Circle, Hyderabad has reported that M/s. Ramakrishna 70 MM theatre was closed from 22-5-1991 to 7-5-1992 and an amount of Rs. 16,60,764/- towards tax has to be waived. The Commercial Tax Officer further reported that entertainment tax has not been levied since theatre was closed. Absolutely there is no material indicating the basis for issuance of certificate to the effect that the loss caused to the Petitioner is Rs. 1,57,50,000/- except the figure given by the Petitioner in their letter dt. 1-11-1991.

8. A learned single Judge of this Court after considering the rival submissions, was of the view that while considering the matter of compensation under Article 226 of the Constitution of India, courts have to adopt the principle approximation and not the actuals and the compensation awarded must be fair and reasonable and commensurate with the damages and set backs faced by the victim. Since the Petitioner did not invoke the common law remedy by filing a suit and if he is relegated to the civil Court for claiming damages now, the claim would be barred by limitation. Under those circumstances, the court feels that it is a fit case that the court should award appropriate compensation and accordingly awarded compensation of Rs. 1 crore for the damages suffered by the Petitioner making it clear that the Petitioner shall refund the claim amount to the Government as and when received from the insurance company and directed the Respondents to pay the said amount to the Petitioner within a period of 3 months from the date of receipt of a copy of the order, failing which it shall carry interest @ 18 per cent from 7-10-1993, the date on which the writ Petition was admitted till the date of payment.

9. Questioning the same, the present writ appeal No. 1407/2000 has been filed by the Respondents in WP No. 15050/1993. One Mr. G. Malleswara Rao, a public spirited person (third party) filed WA (SR) No. 102605/2000 seeking same relief.

10. Sri Sriram, learned Special Government Pleader representing the Advocate General contended that in the absence of any specific averment pointed out that there is violation of fundamental rights guaranteed under Arts.14, 19 and 21 of

the Constitution of India except making a general and vague allegation that the property of the writ petition was damaged, the learned single Judge is not justified in holding that since the Petitioner had suffered huge loss on account of the positive inaction on the part of the State Machinery which resulted in gross violation of fundamental rights under Arts. 19 and 21 of the Constitution of India, he is entitled for reasonable and appropriate compensation. When the Petitioner alleged failure of Government and its officials in protecting the properties from destruction out of large scale vandalism, it should be specifically pleaded how the attacks were made and what is the property which was damaged, and all these are matters that can be decided on specific pleadings and the evidence let in civil proceedings but the same cannot be the subject matter of enquiry under Article 226 of the Constitution unless fundamental rights have been violated. Right to hold property is not a fundamental right and it is only the constitutional right under Article 300A. All the cases on which reliance has been placed by the learned single Judge are cases decided where State or its officials infringed the fundamental rights guaranteed under Article 21 of the Constitution. Justice M.R.A. Ansari in his report concluded that the violent incidents were not organized by the Congress Party or their leaders much less by the Chief Minister or his Ministers but were spontaneous in nature, but however was of the view that the Congress workers were actively involved in all the incidents and the attack by them was against the members of the opposition parties and police must be held to be guilty of dereliction of duty and the Commissioner of Police, Hyderabad ought to have taken action on the basis of the report of the Additional Commissioner of Police and the finding recorded by the learned single Judge is contrary to the One-man Commission Report. The reason for issuance of certificate by the Collector was explained in the additional counter filed by the Respondents to the additional affidavit of the Petitioner that the certificate was issued only for the purpose of availing the benefits in terms of G.O. Ms. No. 1509. Unless the Petitioner establishes deliberate inaction on the part of the police, learned single Judge is not justified in awarding compensation in the absence of any objective material to assess the same. Further, the learned single Judge having held that matter requires evidence proceeded to award compensation on the ground that if the Petitioner is relegated to the civil court for claiming damages, the claim would be barred by limitation. Since the Petitioner can invoke Section 14 of the Limitation Act, learned single Judge ought to have relegated the parties to the civil Court to claim damages for the inaction on the part of the police officials. Further awarding interest at 18% on the damages awarded is not in tune with the principles governing award of interest.

11. Sri I. Mallikarjuna Sarma, learned Counsel for the Appellant in WA (SR) No. 102605/2000 while adopting the arguments of the learned Special Government Pleader would contend that the discretion exercised by the learned single Judge awarding damages is improper unless negligence of the officers has been established in resulting damages. In all the cases referred to by the learned single Judge, the Supreme Court awarded compensation for deprivation of rights

guaranteed under Article 21, therefore damage caused to the property cannot be equated with infringement of right guaranteed under Article 21 of the Constitution.

12. Sri M.R.K. Chowdhary, learned Senior Counsel for the Respondent-writ Petitioner while sustaining the judgment under appeal would contend that it is the duty of the State to protect the property of all citizens and Article 294 of the Constitution of India include tortious liability, and the Government of a state may sue or be sued by the name of the State in relation to suits and other proceedings under Article 300 and State cannot disown the action of its officers and only public law remedy for such act is available to citizen but not by way of civil suit where constitutional rights of the citizen have been violated either due to the action of the State or inaction on the part of its officials. It is not possible for the Petitioner to mention exact loss suffered by him in a petition filed under Article 226 of the Constitution, suffice it is established that damage was caused to the property due to the inaction on the part of the State Officials or dereliction of their duty. Once there is no dispute about the reports of Justice M.R.A. Ansari and Mr. Siva Shankar, in the absence of any material produced by the State in support of its contention that amount of damage claimed is exorbitant certificate issued by the Collector can be taken as basis for awarding compensation.

13. For maintainability of the writ petitions, reliance is placed on the following decisions:

1. U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others,
2. Rabindra Nath Ghosal Vs. University of Calcutta and Others,
3. Common Cause, A Registered Society Vs. Union of India and Others,
4. M. Naga Venkata Lakshmi Vs. Viskhapatnam Municipal Corp. and Another,
5. Sube Singh Vs. State of Haryana and Others,
6. M.S. Grewal and Another Vs. Deep Chand Sood and Others,

After deletion of Article 19(1)(f) by inserting Article 300A, right to life includes right to hold property for his decent living and falls under Article 21 of the Constitution. Decent living is a right to life under Article 21. The successive Collector, without producing the record, cannot plead that certificate was issued on the request of the Petitioner.

14. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, , the Supreme Court created new trend in the field of states liability to protect the precious fundamental and human rights of individual and uphold the Rule of Law.

15. For the tortious liability of the State, reliance is placed on the following decisions:

1. Nilabati Behera V. State of Orissa (7 supra)
2. Consumer Education and Research center and others Vs. Union of India and others,
3. Lucknow Development Authority Vs. M.K. Gupta,
4. The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others,
5. D.K. Basu Vs. State of West Bengal,
6. In Re: Destruction of Public and Private Properties Vs. State of A.P. and Others,
7. National Human Rights Commission Vs. State of Arunachal Pradesh and Another,

For award of compensation for damages caused to the property on account of arson and looting consequent to the large-scale violence erupted in a proceedings under Article 226 of the Constitution, the learned Senior Counsel was sought to rely upon the judgments of the following High Courts as well as the Supreme Court.

7. R. Gandhi and Others Vs. Union of India (UOI) and Another,
8. Inder Puri General Store and Others Vs. Union of India (UOI) and Another,
9. Waf Alaulad and another Vs. M/s. Sundardas Daulatram and sons and others,
10. P.A. Kulkarni v. State of Karnataka AIR 1999 KAR 284
11. Ranchi Bar Association, Ranchi and Another Vs. State of Bihar and Others,
12. P. Gangadharan Pillai Vs. State of Kerala and Others,
13. S.S. Ahluwalia Vs. Union of India and Others,
14. Olga Tellis and Others Vs. Bombay Municipal Corporation and Others,
15. K.V. Joseph and Others Vs. State of Kerala and Others,
16. P.P.M. Thangaiah Nadar Firm and Others Vs. The Government of Tamil Nadu,

16. In the light of the submissions as referred to above, the questions that arise for consideration are:

- 1 Whether writ petition under Article 226 of the Constitution seeking compensation for deprivation of property is maintainable or not?
- 2 How far the State is vicariously liable for the inaction of its officials, which resulted in damage to the property of the citizens?

17. POINT No. 1: Before we proceed to answer Point No. 1, it is appropriate to consider the constitutional framework; laws dealing with property rights of citizens in brief and decided cases on which reliance is placed by the learned Senior Counsel for the writ Petitioner.

18. Prior to 44th Amendment to the Constitution, Sub-clause (f) of Cl.(1) of Article 19, which guaranteed the right to acquire and hold property, was a fundamental right and the same has been omitted by Constitution (44th Amendment) Act, 1978. The effect of insertion of Article 300A is right to hold property has ceased to be a fundamental right, which can be deprived of a person by authority of law. If one's property is taken away by the Executive without the authority of law, he would still be entitled to legal relief on the ground that such executive action is in contravention of Article 300A, which reads "No person shall be deprived of his property save by authority of law". Since the provisions of Article 300A has been brought outside the purview of Part.III, the aggrieved individual would not be competent to move the Supreme Court under Article 32 and aggrieved individual would move the High Court under Article 226 or by a civil suit for violation of any constitutional right. Deprivation of property may take place in various ways, such as destruction or confiscation or revocation of a proprietary right granted by a private proprietor, seizure of goods or immovable property from the possession of an individual or assumption of control of a business, in exercise of the sovereign power of a State. In all those contingencies, there is a "deprivation". If the local authority or the State Government in exercise of any statutory power takes away the possession of the property, the remedy if not provided under the relevant statute, a person can move the High Court under Article 226 of the Constitution. If the municipal authority pulls down the premises for widening of the road without issuing any notice, or deprivation of the property or business place of any person or business, a citizen can move the High Court for compensation for illegal or unlawful acts of the State or its instrumentalities. It comprehends acquisition for public purpose by law enacted by State Legislature or Parliament or by statutory rules, regulations or orders having force of law and not by executive fiat or order. Where deprivation is in exercise of police power without following the procedure established by law, a citizen can move the High Court to see that the State or its instrumentalities to follow the rule of law when such deprivation is imminent.

19. In *NILABATI BAHERA V. STATE OF ORISSA* (7 supra), Justice J.S. Verma on behalf of himself and Justice Venkatachala after reviewing the case law on the subject, in *Rudul Sah Vs. State of Bihar and Another*, , *Sebastian M. Hongray Vs. Union of India (UOI)* and *Others*, *Sebastian M. Hongray Vs. Union of India (UOI)*, , *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, , *Saheli: A Women's Resources Centre v. Commissioner of Police, Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, and *State of Maharashtra and Others Vs. Ravikant S. Patil*, with regard to violation of fundamental right by State's instrumentalities or servants, whether the State can be directed to pay compensation to the victim or his heir by way of "monetary amends" held that "a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and

such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right."

20. Justice J.S. Verma while concurring with the view expressed in Bhagalpur Blinding Cases; Khatri and Others Vs. State of Bihar and Others, ; Khatri and Others Vs. State of Bihar and Others, ; and the view of Misra, CJ in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., and also the view of Venkatachalaiah, J (as he then was) who rendered the leading judgment in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., further held that " if the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate."

21. Dr. Justice J. Anand while concurring with the judgment of the J.S. Verma and Venkatachala, JJ, held as under:

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen...(para 34) Dr. Justice J. Anand while considering the question for grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the constitution held that " it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party

It was also further held that

relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redresses by the court in the facts and circumstances of the case, is possible.

22. In CONSUMR EDUCATION & RESEARCH CENTRE V. UNION OF INDIA (9 supra), the Supreme Court while considering the remedial measures to be taken for the protection of the health of the workers engaged in mines and asbestos industries with adequate mechanism for and diagnosis and control of the silent killer disease "asbestosis" held that "in public law claim for compensation is a

remedy available under Articles 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law."

23. In *LUCKNOW DEVELOPMENT AUTHORITY V. M.K.GUPTA* (10 supra), the Supreme Court while deciding the question that whether the statutory authorities such as Lucknow Development Authority or Delhi Development Authority or Bangalore Development Authority constituted under State Acts to carry on planned development of the cities in the State are amenable to Consumer Protection Act 1986 for any act or omission relating to housing activity such as delay in delivery of possession of the houses to the allottees, non-completion of the flat within the stipulated time, or defective and faulty construction etc., and if the housing activity carried on by the statutory authority or private builder or contractor came within the purview of the Consumer Protection Act, 1986 only after its amendment by the Ordinance No. 24 in 1993 or the Commission could entertain a complaint for such violations even before, held that the Commission or the Forum in the Consumer Protection Act, 1986 is entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.

24. In *CHAIRMAN, RAILWAY BOARD V. CHANDRIMA DAS* (11 supra), the Supreme Court after referring to the various aspects of the public law field and after considering various decisions, where compensation was awarded for the tortious acts committed by the officials of the State and also cases relating to custodial deaths and those relating to medical negligence in *Inhabit Behera v. State of Orissa* (7 supra); *State of M.P. Vs. Shyamsunder Trivedi and Others*, ; *People's Union for Civil Liberties Vs. Union of India and another*, and *Jahar Singh Vs. Union of India (UOI) and Others*, ; *Supreme Court Legal Aid Committee Vs. State of Bihar and Others*, ; *Dr Jacob George Vs. State of Kerala*, ; *Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another*, ; and *Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another*, , while rejecting the contention that the victim should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution held that where the public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law.

25. In *D.K.BASU V. STATE OF W.B* (12 supra), the Supreme Court while

entertaining the public interest writ petition on the basis of a letter addressed by the Executive Chairman, Legal Aid Services, West Bengal, a non-political organization drawing the attention of the Supreme Court to certain news items published in newspapers regarding deaths in police lockups and custody, while laying down the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures;

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State

or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the (sic) Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

26. held that

award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

After adverting to the *NILABATI BEHERA V. STATE OF ORISSA* (7 supra) and various English decisions, the Supreme Court summed up the legal position as follows:

... it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duly bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the

tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. (para 54) In *N.H.R.C. V. STATE OF ARUNACHAL PRADESH* (14 supra), the Supreme Court while entertaining the petition under Article 32 filed by the National Human Rights Commission to enforce the rights under Article 21 of the Constitution of Chakma/Hajong tribals, who are being persecuted by sections of the citizens of Arunachal Pradesh observed that by refusing to forward the applications of the Chakmas to the Central Government, the Deputy Commissioner is failing in his duty and is also preventing the Central Government from performing its duty under the Citizenship Act, 1955 and the Citizenship Rules, 1955.

27. In *U.P. STATE COOP. LAND DEVELOPMENT BANK LTD., V. CHANDRA BHAN DUBEY* (1 supra), while considering the question whether U.P. State Coop. Land Development Bank Ltd., is an authority and an instrumentality of the State land as such amenable to the writ jurisdiction of the High Court for setting aside the dismissal order passed against the its employees, the Supreme Court while observing that the language of Article 226 does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction there under held that the U.P. State Coop. Land Development Bank is an authority controlled by the State Government and the service conditions of the employees of the Appellant, U.P. State Coop. Land Development Bank, particularly with regard to disciplinary proceedings against them are statutory in nature and thus the writ petition was maintainable against the Appellant.

28. In *RABINDRANATH GHOSAL V. UNIVERSITY OF CALCUTTA* (2 supra), the facts are that Appellant appeared for M.A., Examination and his result was not declared. The Appellant took admission in Law Course and requested the Controller of Examinations of Calcutta University to declare his result of the examination and also wrote a letter to the Vice-Chancellor making a similar request. He filed a writ petition in the High Court of Calcutta for publication of his result. On filing writ petition, the result of the Appellant was declared and he was found to have failed. A learned single Judge, who dealt with the matter, appointed a Committee presided over by a retired High Court Judge to investigate why the result had not been declared for so many years. The Committee, so appointed, gave its findings. Basing on the said findings, the learned Judge held that the University of Calcutta and the Vice-Chancellor should pay to the Appellant a sum of Rs. 60,000/- as monetary compensation and damages and directed them to take appropriate action against the persons responsible. On appeal being filed, a Division Bench of the Calcutta High Court

held that on the facts of this case, compensation should not have been awarded to the Appellant but the proper course would have been to leave the parties to agitate their grievances before a competent Civil Court. On further appeal, the Supreme Court while confirming the judgment of the Division Bench of the Calcutta High Court and after extracting the observation made in NILABATI BEHERA V. STATE OF ORISSA (7 supra), held that "a claim in public law for compensation for contravention of human rights and fundamental freedom, the protection of which is guaranteed in the Constitution is undoubtedly an acknowledged remedy for protection and enforcement of such right and such a claim based on strict liability made by resorting to a constitutional remedy, provided for the enforcement of fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort, as was held by this Court in Nilabati Behera (7 supra). It is in fact an innovation of a new tool with the Court which are the protectors of the civil liberty of the citizens and the Court, in exercise of the same, would be in a position to grant compensation when it comes to the conclusion that there has been a violation of fundamental rights under Article 21". The Supreme Court further held that "before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act".

29. In COMMON CAUSE, A REGISTERED SOCIETY V. UNION OF INDIA (3 supra) the Supreme Court while dealing with the review petition filed to review the judgment dt. 25-9-1996 in Common Cause, A Registered Society v. Union of India (1996) 6 SCC 530), after referring to the decision of the Privy Council in Maharaj v. Attorney General of Trinidad & Tobago (1978) 2 ALL.ER 670 (PC), wherein the Appellant, who was a Barrister, was sentenced to 7 days" imprisonment by a Judge of the High Court, which was set aside by the Privy Council in appeal. The Appellant applied for redress u/s 6 of the Constitution of Trinidad and Tobago on the ground that he was deprived of his liberty without due process of law as guaranteed to him u/s 1 of that Constitution. The claim was dismissed by the High Court, but was upheld by the Privy Council holding that Section 6 of the Constitution impliedly allowed the High Court to award compensation as compensation may be the only practicable form of redress in some cases, and also referring to the earlier judgment of it in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, , and various decisions of the Supreme Court and English Courts, held that the allotment of petrol outlets by the Petitioner cannot be treated as an "act of the State" and the rule of immunity invoked by Mr. Parasaran cannot be accepted. Further, while dealing with the judgment awarding exemplary damages sought to be reviewed, the Supreme Court after extracting definition of "tort" in JOWEITT'S DICTIONARY OF ENGLISH LAW, reading as, " "Tort" has been derived from the Latin word "tortus" which means "twisted" or "crooked". In its original and most general sense, "tort" is a wrong Jowitt's Dictionary of English Law defines Tort as under:

Tort signifies an act which gives rise to a right of action being a wrongful act or

injury consisting in the infringement of a right created otherwise than by a contract. Torts are divisible into three classes, according as they consist in the infringement of a jus in rem, or in the breach of a duty imposed by law on a person towards Anr. person, or in the breach of a duty imposed by law on a person towards the public.

The first class includes (a) torts to the body of a person, such as assault, or to his reputation, such as libel, or to his liberty, such as false imprisonment; (b) torts to real property, such as ouster, trespass, nuisance, waste, subtraction, disturbance; (c) torts to personal property, consisting (i) in the unlawful taking or detaining of or damage to corporeal personal property or chattels; or (ii) in the infringement of a patent, trade mark, copyright, etc. ; (d) slander, of title; (e) deprivation of service and consortium.

The second class includes deceit and negligence in the discharge of a private duty. The third class includes those cases in which special damage is caused to an individual by the breach of a duty to the public.

and after referring to the various earlier decisions of it and English decisions allowed the revision petition recalling the direction for payment of Rs. 50 lakhs as exemplary damages as also the direction for a case being registered by the C. B. I. against the Petitioner for Criminal Breach of Trust and investigation by them into that offence and the further direction to investigate whether Petitioner has committed any other offence.

30. In *M. NAGA VENKATA LAKSHMI V. VISAKHAPATNAM MUNICIPAL CORPORATION*, (4 supra) the facts are that the Appellant herein purchased about 167 sq. yard of vacant land in plot No. C/1and2, R. S. No. 52 (P) situate at Balayya Sastry's layout, Sitammadhara, Alipuram Extension Ward, Visakhapatnam by reason of a deed of sale dated 8-07-1982 in an unapproved layout and subsequently layout was approved. Plots belonging to Ors. had been regularized but the Appellant's plot was not regularized. On rejection of the representation made by the Appellant to Visakhapatnam urban Development Authority (VUDA), the Appellant filed a writ petition before High Court of A.P. The said writ petition was dismissed. The appeal being filed by the Appellant has also been dismissed. On further appeal, the Supreme Court after referring to the observation made in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, , reading as "Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law",

disposed of the appeal remanding the matter to the High Court observing as follows"

On what basis the layout plan had been drawn resulting in deprivation of a valuable right of the Appellant, therefore, was required to be determined. Furthermore, if VUDA wanted to deprive the Appellant from a valuable right of

property, the question which should have been posed was as to whether there for the authorities should have acquired the property or not.

31. In *SUBE SINGH V. STATE OF HARYANA* (5 supra), the Supreme Court after survey of the law evolved in last 2 1/2 decades with regard to award of compensation as public law remedy for custodial violence/death or illegal detention while concluding that there is no clear or incontrovertible evidence about custodial torture, nor any medical report of any injury or disability several of the allegations are proved to be exaggerated and false and it is not a fit case for award of compensation. Since all reliefs which should be granted in such a case, have already been granted by ordering an inquiry by the CBI and ensuring that the Police officers named are prosecuted held that order will not come in the way of any civil court awarding compensation in an action in tort or the criminal court awarding compensation u/s 357 Cr.P.C., in the pending prosecution against any of the officers, if the charges are established and disposed of the writ petition with the above observations.

32. In *M.S.GREWAL V. DEEP CHAND SOOD* (6 supra), the facts are that 14 children who were taken to picnic at Tandapatanindora on the bank of River Beas, and who were allowed to play in the danger zone of the water without any caution or any warning being sounded, were entered into the water of "dibber" and were drowned. The parents of the unfortunate fourteen children moved the High Court by filing petition under Article 226 of the Constitution seeking relief by way of an inquiry by CBI to find out the causes for the tragedy and fixation of responsibility therefore and punishment to the guilty ones together and with a prayer for adequate compensation from the school authorities. In which, the High Court ordered an inquiry to be conducted by CBI and allowed the writ petition ordering payment of compensation at R.5 lakhs each of the parents of the 14 students who die in the incident and a sum of Rs. 30,000/- each to each of the parents of the students who suffered due to the drowning incident. On appeal being filed, the plea of non-maintainability of the writ petition filed for award of compensation though advanced at the initial stage of the submissions, the same was not pressed. The Supreme Court after referring to its earlier decisions in *NILABATI BEHERA V. STATE OF ORISSA* (7 supra) and *D.K. BASU V. STATE OF W.B* (12 supra), and after considering the question whether the compensation award is justifiable or not, upheld the award of compensation.

33. In *OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION* (22 supra), the pavement dwellers and Anr. moved the Supreme Court not to evict the pavement dwellers from their squalid shelters without being offered alternative accommodation and to protect their right to life guaranteed under Article 21 of the Constitution of India. The Supreme Court after referring the settled principle that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable and also referring to its earlier judgments held as under:

... as a mala fide act has no existence in the eye of law, even so,

unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law, which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it...(para 40) In K.V.JOSEPH V. STATE OF KERALA (23 supra), a Division Bench of Kerala High Court while dealing with the writ petition filed seeking a writ of Prohibition restraining some of the Respondents and PWD authorities and Panchayat authorities from embarking on further construction of the road or bridge through the properties belonging to the Petitioners alleging that had any steps been taken, the demolition of the residential house would not have taken place and the law enforcement machinery had failed to provide protection to the properties and persons of the Petitioners, held that the relief to redress the wrong for the established invasion of the fundamental rights of the citizen under public law jurisdiction is in addition to the traditional remedies. It was further held "the incident that took place on 23. 9. 93, demolition of the building of the 4th Petitioner, was solely because of the inaction on the part of the police. This violated the fundamental right guaranteed to the 4th Petitioner under Article 21 of the Constitution of India and the "administrative law of accountability" of Respondents 1 to 4, as held by the Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, , shall extend to compensate the 4th Petitioner. This Court exercising its power under Article 226 of the Constitution can definitely grant compensation in terms of the remedy available under Public Law based on strict liability for contravention of the fundamental rights", and allowed the writ petition directing the Respondents 1 to 4 to pay Rs. 4,65,000/- to the Petitioner No. 4 as assessed in the commission report which is not objected to by any of them as compensation, to enable her to reconstruct the building.

34. From the copious discussion of the judgments of the Supreme Court and various High Courts, it is abundantly clear that whenever a person is deprived of his property without following due procedure of law by the Government or its officials or Local Authority and if no remedy is provided under the relevant statute can move the High Court under Article 226 of the Constitution of India. Further a public law remedy is available when invoked by the have-nots for deprivation of life and livelihood and where the same is infraction or invasion of his rights guaranteed under Article 21 of the Constitution and relief under Article

226 for payment of compensation would be granted when it is established that there has been infringement of fundamental rights of the citizen enshrined under Article 21 of the Constitution of India. The point No. 1 is accordingly answered.

35. Point No. 2: Before we proceed to answer point No. 2, it is to be noted that the entire case of the writ Petitioner revolved upon the inaction/failure, on the part of the State administration, particularly, police in preventing the damage caused to the property of the writ Petitioner in the riots ensued due to large scale violence on the aftermath of late Prime Minister Rajiv Gandhi. It is also settled principle that how far the State is liable to compensate the damage caused in each case has to be decided on its own facts in the absence of any comprehensive legislation governing the law of the State for the tortious acts committed by its officials or tortious acts on the part of the officials of the State or vicarious liability for the inaction, negligence or dereliction of duty on the part of the Government Officials of the State Government.

36. It is not disputed that maintenance of law and order is a primary duty of the State. Entry 1 of List II of Schedule-VII of the Constitution of India deals with Public Order. The State Legislature is given plenary authority to legislate on all matters which relate to or are necessary for the maintenance of public order.

37. Public Order implies absence of violence and an orderly state of affairs, in which citizens can peacefully pursue their normal avocation of life. Anything which disturbs public tranquility disturbs "public order" (See: Romesh Thappar Vs. The State of Madras, . Entry-1 (Public Order) includes "public safety" in its relation to the maintenance of "public order". In short, "public order" is synonymous with public peace, safety and tranquility, not only to the persons but also to the property. Anything which disturbs the current of the life of the community or property would amount to a disturbance of the "public order".

38. Hyderabad City Police Act, 1348-F (for short "the Act") is an existing enactment to enforce law and order. Section 22 of the Hyderabad City Police Act, 1348-F, (for short "the Police Act") deals with powers of Commissioner and other Police Officer to give directions to the public. Under Sub-section (3) of Section 22, the Commissioner of City Police, Hyderabad may, at any time by order in writing prohibit every kind of assembly or procession for such time as may appear to him to be necessary and proper for preservation of peace and public safety. u/s 23 of the Police Act, the Commissioner of City Police, Hyderabad may in order to suppress or prevent any riot or grave disturbance temporarily close or take possession of any building or place and may exclude all or any persons there from or may allow them to enter the place on such conditions as he may prescribe. u/s 26 of the Police Act, whenever it appears to the Commissioner of City Police, Hyderabad that the movements or acts of any person residing in the City of Hyderabad are causing or likely to cause danger, alarm or harm to the life or property of any person or that there are reasonable grounds to believe that such person is engaged or is about to be engaged in the commission of an offence necessitating the use of force or violence or an offence punishable under

Chapters XII, XVI and XVII of the Indian Penal Code or is about to abet such offences. Under Sub-Section 5 of Section 26, the Government may, if satisfied that peace or public safety in the City of Hyderabad or in any part thereof is disturbed or is likely to be disturbed on account of a conflict between different communities or groups or sections or gangs thereof, declare by a proclamation that an emergency exists and after such proclamation of emergency has been issued, if it appears to the Commissioner of City Police, Hyderabad that the presence, movements or acts of any person in the city is or are causing or likely to cause danger or alarm or that a reasonable suspicion exists that such person has a design to destroy public peace and tranquility, he may, by order in writing to be served on such person or by beat of drum or otherwise as he thinks fit, direct such person to conduct himself in such manner as in the opinion of the Commissioner may be reasonable or public safety or may direct such person to remove himself to such place and by such route or routes and within such time as the Commissioner may prescribe, without disclosing any reason therefor.

39. From the above, it is evident that the Commissioner of City Police, Hyderabad is under statutory obligation to prevent any riot or grave disturbance or destruction of property; and to give instructions preventing any riot or grave disturbance. He can take possession of any property into his custody or place by excluding all or any persons there from and prohibit every kind of assembly or procession for preservation of peace and public safety.

40. But in the case on hand, the question is whether the State is duty bound to safeguard the property of its citizens, and when it failed to safeguard the properties, whether State is liable to compensate in public law remedy for deprivation/destruction of property during riotous acts/strikes etc., In State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others, , the facts are that the Respondent and Ors. filed the suit for compensation against the State for negligence of Prison officials resulting death of a prisoner in jail. State of Andhra Pradesh contested the suit on two principal grounds, namely, that the suit was barred by limitation and that no damages could be awarded in respect of sovereign functions as the establishment and maintenance of jail was part of the sovereign functions of the State and, therefore, even if there was any negligence on the part of the Officers of the State, the State would not be liable in damages as it was immune from any legal action in respect of its sovereign acts. Both the contentions were accepted by the trial Court and the suit was dismissed. On appeal, the suit was decreed by the High Court for a sum of Rs. 1,44,000-00 with interest at the rate of 6 per cent per annum from the date of the suit till realization. On further appeals, the Supreme Court while dealing with the limitation to claim compensation against the State under Article 72 of the Limitation Act, 1963, vis-?-vis limitation prescribed under Article 113 of the Limitation Act, 1993 held that " Articles 72 and 113 are applicable to different situations. In order to attract Article 72, it is necessary that the suit must be for compensation for doing or for omitting to do an act in pursuance of any enactment in force at the relevant time. That is to say, the doing of an act or

omission to do an act for which compensation is claimed must be the act or omission which is required by the statute to be done. If the act or omission complained of is not alleged to be in pursuance of the statutory authority, Article 72 would not apply. Article 72 would be attracted to meet the situation where the public officer or public authority or, for that matter, a private person does an act under power conferred or deemed to be conferred by an Act of the Legislature by which injury is caused to Anr. person who invokes the jurisdiction of the Court to claim compensation for that act. Thus, where a public officer acting bona fide under or in pursuance of an Act of the Legislature commits a "tort", the action complained of would be governed by Article 72 which, however, would not protect a public officer acting mala fide under colour of his office. The Article, as worded, does not speak of "bona fide" or "mala fide" but it is obvious that the shorter period of limitation, provided by Article 72, cannot be claimed in respect of an act which was malicious in nature and which the public officer or authority could not have committed in the belief that the act was justifiable under any enactment.

41. In *R. GANDHI V. UNION OF INDIA* (15 supra), a learned single Judge of Madras High Court while dealing with the public interest litigation for the injuries suffered by section of community in Coimbatore in Tamil Nadu and damage caused to their property and serious affecting their business in the wake of assassination of Smt. Indira Gandhi, held that "under Article 300A of the Constitution, no person shall be deprived of his property save by authority of law and to allow his properties to be reduced to ashes by the force of darkness and evil is a clear deprivation of the right to property guaranteed by the Constitution." For ascertainment of proper quantum of compensation, the learned Judge after considering the report submitted by the Collector of Coimbatore, who has enquired into the matter and has gone into the matter in detail and after taking into consideration all factors including the payments made by the Insurance Companies, recommended payment of compensation in 32 cases for the loss of movables and damages to immovable's and recommended total amount of compensation at Rs. 33,19,033/-, which has not been challenged, held "that the second Respondent-State of Tamil Nadu is bound to pay compensation to the victims as assessed and recommended by its senior official. Instead, the Government of Tamil Nadu have issued G. O. Ms. No. 913, dated 29-04-1986, awarding ex gratia payment of a beggarly amount of Rs. 750 to each of the twenty persons affected by the Coimbatore riots, who have, however, refused to receive this payment, rightly, with a sense of self-respect" and directed the State Government by way of Mandamus to pay compensation to the victims of the Coimbatore riots strictly as per the report of the Collector of Coimbatore dt. 11-2-1985 in the sum of Rs. 33,19,033/- as assessed and recommended by the Collector.

42. In *M/S. INDERPURI GENERAL STORE V. UDI* (16 supra), Justice R.P. Sethi (as he then was) while dealing with the writ petition filed for payment of compensation to the extent of losses actually suffered by the writ Petitioners as

shown in Annexures P1 to P7 of the petition in the unfortunate communal riots took place in Jammu on 13-1-1989, after referring to the various judgments of the Supreme Court, namely, *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, ; *Kharak Singh Vs. The State of U.P. and Others*, ; *M.C. Mehta and another Vs. Union of India and others*, ; *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ; *bhim singh V. State of J and K (1985) 4 SCC 577* and *R. Gandhi v. Union of India (AIR 1989 MAD 205)* and various English decision held "Art. 21 embodies the general principle that no person shall be deprived of his life or personal liberty and guarantees the most essential of all the rights as enshrined in Part III of the Constitution.... The term "life" used in the Article is not only restricted to the more nominal existence but extends to the inhibition against its deprivation to all those limits and faculties by which life is enjoyed. It also includes the right to livelihood. The ambit and scope of "right to life" conferred by this Article is wide and far-reaching which does not mean merely that life cannot be ex-tinguished or taken away but embraces within its ambit the right to livelihood because no person can live without the means of living. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation" and allowed the writ petition directing to pay compensation to the extent of loss suffered by the Petitioners as assessed by the Committee constituted to assess the damages.

43. *WAF ALALAULAD V. SUNDARDAS DAULATRAM (17 supra)* is a case where property of a citizen was forcibly occupied by un-social elements by creating terror. On filing writ petition for restoration of the possession of the premises in dispute and for maintaining law and order, the Allahabad High Court while dealing with the preliminary objection with regard to maintainability of writ petition held that "when a person, who has been dispossessed from his property by brazen acts of lawlessness by or with the help of anti-social elements, approaches this Court under Article 226 of the Constitution, this Court does not exercise its power to enforce the contractual and legal obligations of the parties. It only directs the Government to enforce the Rule of law and to protect the lives, liberty and the properties of the people and, if found necessary, to restore the possession of the property to the person who has been dispossessed there from, leaving it open to the parties to get their rights adjudicated through Civil Court. To tell a person whose property has been forcibly captured and seized by or with the help of anti social elements, to file a suit for its recovery and be on the street till the suit is decided by the last Court, is nothing but slapping a person in distress," and held that the writ petition was maintainable.

44. In *P.A.KULKARNI V. STATE OF KARNATAKA (18 supra)*, a Division Bench of the Karnataka High Court on a writ petition filed by way of public interest seeking compensation for the deaths and injuries caused on account of collapse of a building constructed by the builders by using substandard material besides ignoring the structural guidelines, after referring to its earlier decisions and also various decisions of the High Courts and Supreme Court, held that "it cannot be

denied that protecting life and liberty of the citizen is the duty of a responsible Government who cannot abdicate its function and allow the life and liberty of the citizen in jeopardy. Wherever a loss is caused to a person on account of proved acts of commission and omission of an authority, a welfare State under a democratic system of responsible Government is under an obligation to take effective steps against the erring parties and ensure adequate compensation to the victims of the calamity caused on account of the acts of commission and omission. Failure to take any action against the erring and responsible person or Authority would be a sufficient ground for this Court to intervene and compel the State to perform its constitutional obligations. Technical pleas and procedural wrangles cannot be permitted to be put as obstruction in grating the relief to the victims and their families." The Karnataka High Court further held that the Respondent-State has been found to have failed in its discharge of constitutional obligations forcing the present Petitioners to approach this Court for issuance of appropriate directions and Respondent No. 2 which was found by the Commission of Enquiry, to have failed in exercising sufficient care and examining various aspects specially Zoning Regulations in regard to the coverage, off-street parking, bye-law No. 38 regarding set-back of fire safety measures while sanctioning or renewing the license in favour of the owners which ultimately resulted in the death of 118 and injury to 67 persons in Gangaram Building collapse. In view of the finding of the Commission that no valid licence as per the Act had been obtained by the owners of the building before the commencement of the construction, the Respondent-Corporation failed to take any action against the erring persons resulting in loss of human lives and injuries to many", and directed payment of compensation as per the criterion fixed in the judgment.

45. In *RANCHI BAR ASSOCIATION, RANCHI V. STATE OF BIHAR* (19 supra), Patna High Court while considering the award of compensation for the loss of life, liberty and property pursuant to the Bundh call given by Jharkhand Mukti Morcha leading to ransacking of the premises of the Bar Association of District Court and destruction of its furniture and the vehicles parked there were damaged or burnt, formulated the following four questions for consideration:

1 Whether any person or group of persons, party or Organization has any right under the Constitution or any other law to hold Bundh, Agitation, Demonstration and Rally in a manner causing/compelling the people by force or show of force or even otherwise to stop from carrying on their business, profession and other lawful activities?

2 Whether the Government and its officers are bound not to allow such Bundh, Agitation, Demonstration and Rally in order to protect the person and property, business and other lawful activities of the people?

3 Whether the Organizers of the Bundh and/or the State Government and its officers are bound to compensate for the loss of life and property suffered by the people during such Bundh, Agitation, Demonstration and Rally and if so what should be the amount of compensation in the instant case.

4 Whether by compelling the closure of the Courts on 8th June, 1998, the organizers of the Bundh and those who have participated in it have committed contempt of Court and if so, what should be the punishment ?

While answering the question No. 2 in affirmative holding that the Government, its administration and the police are bound not to allow the unlawful Bundh, Rally etc., in order to protect the life, liberty and property of the people observed as follows:

The Government being duty bound to protect the people, has to prevent unlawful activities like Bundh, Rally etc. which invade or threaten to invade their life, liberty and property. It is neither open to any person, organization or political party to take the people to ransom, nor is it permissible for the Government to allow such unlawful activities. Such activities have to be prevented at the threshold otherwise it may not be possible to protect the people's rights. Prevention of unlawful activities ensures the protection of the rights of the people and their property. If the people who organize and support such unlawful Bundh, Rally etc. are armed, they have to be disarmed and prevented from proceeding further by the State administration and any failure on the part of the administration to do so is negligence liable to be punished.

(para 15) While considering the first limb of question No. 3 ie., Whether they are bound to compensate the loss of life and property suffered by the people during such Bundh, Agitation, Demonstration or Rally, Patna High Court answered the same in affirmative holding that the Government is bound to pay compensation to those who have suffered the loss of life, liberty and property on account of failure on its part to discharge its public duty to protect them. In appropriate cases even the organizers of the Bundh, Agitation, Demonstration and Rally can also be directed to pay compensation. While considering the second limb of question No. 3 ie., what is the amount of compensation to be paid for the damage caused to the Bar Association properties and also to large number of vehicles (scooters) and for the loss of life of Manoj Kumar Agarwal, who was seriously injured by the supporters of the bundh, resulting in his death in a hospital, Patna High Court directed the Government of Bihar to deposit Rs. 1,50,000/- with the Judicial Commissioner, Ranchi, who shall pay the amount of compensation to the owners of the vehicles and the Bar Association, as assessed by the Committee and the Government of Bihar shall also pay a sum of Rs. 2,94,000/- to the father of the deceased, Manoj Kumar Agarwal, respectively.

46. In P.GANGADHARAN PILLAI V. STATE (20 supra), the Kerala High Court on a writ petition filed seeking compensation for the loss of business and property sustained by the writ Petitioner on account of mob attack on his hotel and looting of the property alleging that damage could have been prevented if appropriate and timely action had been taken by the State Government, a learned single Judge of Kerala High Court while directing the State to pay an amount of Rs. 35,000/- as compensation against Rs. 86,000/- as claimed by the writ Petitioner, observed as follows:

The damage caused to Petitioner's hotel and business could have been avoided if, Respondents 2 to 4 had taken adequate steps at appropriate time. Therefore, I find that the 1st Respondent is liable to compensate the Petitioner for violation of his fundamental right. The averments in the original petition and the counter-affidavit would show that State had, as a matter of fact, granted compensation to certain traders who suffered damage on 16-10-1990 as a result of the mob attack. I find no reason to deny the Petitioner a similar treatment. (para 19) In *S.S.AHLUWALIA V. UNION OF INDIA* (21 supra), the facts are that a writ petition has been filed under Article 32 of the Constitution of India before the Supreme Court seeking to extend the benefits of the judgment in *Bhajan Kaur v. Delhi Administration* (ILR 1996 (Delhi) 754), wherein the High Court of Delhi directed payment of a sum of Rs. 2 lakhs and also made a general direction that this direction should apply to similar cases, where several killings of Sikhs in Delhi and other parts of the Country in the wake of assassination of Smt. Indira Gandhi, to the entire country and for certain other reliefs. The Supreme directed the High Courts of Delhi, Rajasthan, Orissa, Punjab and Haryana, Himachal Pradesh, Patna, Madhya Pradesh, Allahabad, and Bombay in the States of Delhi, Rajasthan, Orissa, Haryana, Himachal Pradesh, Bihar, Madhya Pradesh, Uttar Pradesh, Maharashtra and Goa to deal with the matter in respect of the allegations made therein in respect of the State falling in its jurisdiction by treating this writ petition as a petition filed in that High Court, and transferred the proceedings to the respective High Courts.

46. *P.P.M. THANGAIAH NADAR FIRM V. GOVERNMENT OF TAMIL NADU* (24 supra) is again a case where State has been directed to pay compensation to the persons who sustained loss due to communal clash. On the eve of the assembly elections there was a communal clash on 9-5-1996, which continued, unabated for a few days. The Government of Tamil Nadu constituted a Commission of Inquiry in exercise of the powers conferred u/s 3(1) of the Commissions of Inquiry Act, 1952. On Commission submitting its report recommending payment of compensation in respect of 186 claims, the Government accepted the report and sanctioned compensation to 186 persons equal to the quantum of loss sustained by the claimants, whose losses were assessed by the Commission at much more than Rs. 2,00,000/-, but the Petitioners refused to receive compensation and filed the writ petitions claiming certain amounts mentioned in the writ petition. On learned single Judge of the Madras High Court referring the question, namely, whether it is obligatory on the part of the State to compensate the loss caused to the properties due to communal clashes, particularly when the right to hold and acquire the property protected under Article 19(1)(f) of the Constitution has been deleted, to be dealt with by the Full Bench, the Full Bench of Madras High Court after referring to the judgment of the Apex Court in *State of U.P. and Others Vs. Manohar*, concluded that notwithstanding the deletion of Article 19(1)(f) and Article 31, in case where a person is deprived of his property without authority of law, such person can protect the right recognized under Article 300A by approaching the High Court under Article 226, of course within

the known parameters of jurisdiction under Article 226. The Full Bench of the Madras High Court, while considering the question with regard to the liability of the State on account of loss of life or damage to the property during rioting and the remedy available to the affected person, after considering the judgments of that court including the judgment under appeal and *Sri Lakshmi Agencies and Others Vs. Govt. of A.P. and Others*, and judgments of various High courts and Supreme Court, held as under:

It is no doubt true that in the aforesaid decisions, the learned Judges have proceeded on the footing that compensation is payable when a fundamental right is affected on account of any negligent act or dereliction of duty. The destruction of property was considered as violation of fundamental right under Article 21. Even assuming that destruction of property may not come within such fundamental rights, in our opinion, such right being a constitutional right, is also required to be protected. It is the duty of the State to protect life, liberty and property of a person and any negligence or dereliction of duty on the part of the government machinery would obviously make the State Government liable. However, the question of amount of compensation payable is obviously a matter of inference to be considered on facts of each case.

(para 21) It was further held at para 25 as follows:

Thus a conspectus of the decisions of several High Courts and even those of the Supreme Court makes it clear that it is the constitutional obligation of the State to protect the life, liberty and property of a person and where the State, that is to say its machinery without any justification fails in such duty resulting in loss to a person the State cannot avoid its responsibility by taking refuge under a plea that the damage was done by the rioters and not by State's machinery.

47. While considering the question with regard to the forum where the remedy is to be sought for, the Full Bench of Madras High Court after referring to various judgments of the Supreme Court including the judgment in *Tamil Nadu Electricity Board V. Sumathi* (AIR 2000 SC 1603) wherein the Supreme Court held that when disputed question of fact arises, and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper, observing that it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit, and when there is a negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution, and *RABINDRA NATH GHOSAL V. UNIVERSITY OF CALCUTTA* (2 supra), wherein it was held that in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires or there was some inaction in the performance of the duties unless there is malice or conscious abuse. Before any exemplary damages can be awarded it must also be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the

sufferer was a helpless victim of that act" answered the reference holding as under:

...The State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the officers of the State ordained with duty of maintaining law and order have failed to protect the life, liberty and property of person and such failure amounts to dereliction of duty, the State would be liable to pay compensation to the victim. Such liability can be enforced through public law remedy or common law remedy. Where, necessary facts to establish culpable negligence on the part of officials are available, the High Court under Article 226 can issue appropriate direction. Where, however, the main aspect relating to culpable negligence of the officer is seriously disputed, filing of suit may be more appropriate remedy. No hard and fast rule can be laid down on these aspects and obviously the availability of remedy under Article 226 would depend upon the facts and circumstances of each case....(para 38)

48. The Full Bench of Madras High Court while considering the question relating to the value to be attached to the report of a Commission constituted under the Commission of Inquiry Act, held that if the report of a Commission of Inquiry is not legally binding and has got no evidentiary value, once such report, to the extent it is accepted by the State, obviously it would not be fair on the part of the State to contend that it is bound by the findings of the Commission of Inquiry.

49. The Supreme Court in *S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram*, while considering the justification of the action of the High Court in exercising its power under Article 226 of the constitution of India in awarding compensation to the writ Petitioners in spite of Grid Corporation of Orissa had denied their liability on the ground that the deaths had not occurred as a result of their negligence but because of the negligence of the writ Petitioners/ Respondents themselves or of an act of God or because of an act of some other persons, following its earlier judgment in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, wherein the Supreme Court took the view that the High Court committed an error in entertaining the writ petition under Article 226 of the Constitution that actions in tort and negligence were required to be established initially by the claimants, set-aside the impugned judgment of the Orissa High Court of Cuttack directing the Appellants to pay a sum of Rs. 2,70,000/- by way of compensation to the writ Petitioners/Respondents therein, but having regard to the long lapse of time, directed the Appellants not to recover the amount already paid to the Respondents.

50. There is no difficulty against the positive State action or its officials violating the fundamental right to life or liberty, Article 21 springs into action, and it can also stretch upto mulcting the State for the wilful negligence of the servants of the State in discharge of their functions, which will affect of violating constitutional guarantee enshrined under Article 21 of the Constitution. Award of

compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved by the State Government by enforcing Rule of law. In *D.K. BASU V. STATE OF W.B* (12 supra), it was held that grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen, but the said observation was made regarding deaths in police lock ups and custody. In *R. GANDHI V. UNION OF INDIA* (15 supra); *M/S. SRILAXMI AGENCIES V. GOVERNMENT OF ANDHRA PRADESH* (26 supra); *M/s. INDERPURI GENERAL STORE V. UDI* (16 supra); *WAF ALALAULAD v. SUNDERDAS DOULATRAM* (17 supra); *P.A.KULKARNI V. STATE OF KARNATAKA* (18 supra); ; *P. GANGADHARAN PILLAI V. STATE OF KERALA* (20 supra); *K.V. JOSEPH V. STATE OF KERALA* (23 supra) and *PPM THANGAIH NADAR FIRM V. GOVERNMENT OF TAMIL NADU* (24 supra), High Courts were called upon to decide award of compensation in proceedings under Article 226 of the Constitution when State failed to protect the property affecting the livelihood of the citizens due to communal violence and violence erupted on assassination of Smt. Indira Gandhi. In some of the cases, commissions were constituted to assess the damage caused to the properties and States were directed to pay compensation as per the reports of the Collectors or Commissions, constituted to assess the damages.

51. The writ Petitioner unless establishes the deprivation of fundamental rights ie., violation of Article 21, due to the damage caused to the property affected his livelihood a right guaranteed under Article 21 and in violation of statutory duties due to the negligence on the part of the Government officials, he is not entitled to any relief.

52. The Supreme Court in *NILABATI BAHERA V. STATE OF ORISSA* (7 supra) categorically held that if the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the modes of redress being that which is appropriate in the facts of each case.

53. In all the cases referred to above, where life and liberty have been deprived by the State Government or its Officials, it was held that State is vicariously liable for the acts done by its officials.

54. Article 21 of the Constitution mandates no person shall be deprived of his life and personal liberty except according to the procedure established by law. Earlier to the judgment of the *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and Another, Article 21 was construed narrowly only as a guarantee against Executive

action unsupported by law. But the Supreme Court opened up a new dimension and gave an expanded meaning to the life under Article 21, Life includes all those aspects of life which go to make a man's life meaningful, complete and worth living (See: Also Board of Trustees of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

55. The Supreme Court in New Riviera Coop. Housing Society and Another Vs. Special Land Acquisition Officer and Others, held that acquisition of land by State for public purpose does not violate Article 21 or the right to livelihood or right to shelter or dignity of a person. Whereas in Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, it was held by the Supreme Court that right of agriculturists to cultivation is part of their fundamental right to livelihood.

56. Therefore, in order to succeed in the claim for damage caused to the property, a person has to establish that by such damage his right to livelihood has been infringed, guaranteed under Article 21 of the Constitution. Life and livelihood are relative terms, differs from person to person. For example, terrorists attacked Taj Hotel at Bombay on 26-11-2008, in which the property owned by Ratan Tata has been damaged. Can Ratan Tata claim damages from the Central or State Government for the damage caused to the said property due to the failure of police/intelligence/state officials in preventing the said damage by invoking public law remedy under Article 226. The answer certainly is " NO ", because damage to the property is not affected his livelihood. At the same time, the property of the pavement tea kiosk vendor, who eke out his livelihood by selling snacks and tea, is deprived of his property, he can seek compensation for deprivation of his livelihood for infringed right guaranteed under Article 21 of the Constitution because it affects his livelihood. In a communal violence, if a passer-by's car is damaged by the rioters, it is only a loss to the property and it may not affect the livelihood of person owned the car. Whereas, an auto driver who is eking out his livelihood by running auto and when his auto is burnt by the rioters in the riot, that affects the livelihood of the auto driver. Therefore, destruction of property affects a person's livelihood, infringing right guaranteed under Article 21 differs from person to person. In such a situation, a Welfare State is under obligation to give financial help to the have-not persons who deprived of their livelihood for no fault of them. In all the cases, where various High Courts have awarded compensation to the persons whose livelihood is affected due to violence erupted either at the time of assassination of Smt. Indira Gandhi or communal disturbances on police failure to prevent arson, looting etc., resulting loss to the property.

57. But in the case on hand, admittedly, the business premises of the Petitioner, where he is exhibiting cinemas and running a hotel has been damaged on the aftermath of Mr. Rajiv Gandhi, which has not been affected his livelihood, but, however, he sustained loss in business and damage to his personal property. Therefore, the writ Petitioner cannot invoke the public law remedy to claim

damages against the State unless he establishes that negligence on the part of the officials of the State, which has taken away his livelihood.

58. The whole pleadings of the writ Petitioner would go to show that the police totally failed in their duties in protecting the property ie., Ramakrishna 70 MM theatre in the N.T.R. Estates. It could have been possible for the local police to identify the persons who collected themselves there for the purpose of damaging the properties in N.T.R. Estates. But the police did not take steps to prevent them from damaging the properties. Only after damage, the Commissioner of Police deputed Additional Commissioner of Police to inquire into the situation, who submitted his report, which was allowed to remain in cold-storage. Justice M.R.A. Ansari submitted his report. According to his report, police were held guilty for dereliction of duty in not preventing the damage to the properties of the writ Petitioner. In spite of giving findings, the Government did not take any steps to compensate the damage suffered by the writ Petitioner. As the State failed to protect the interests of the citizens by allowing the violence to break up, the State alone is responsible to reimburse the loss suffered by the citizens, and State is under obligation to compensate the writ Petitioner after taking into account the insurance claim, if any, recovered by him.

59. Learned single Judge after referring to the Commission Report and the Memorandum of Action Taken on the report of the one Man Commission, while observing that the police reached the spot much prior to the incident. The Assistant Commissioner of Police, Circle Inspector and Sub-Inspector of Police and APSP Platoons were on the spot. But, however, they failed to take any preventive measures for the reasons best known to them and they moved away from the place. It is the duty of the police when they apprehend danger to the property and more especially after having come to know about 150 persons were waiting in front of the gate of N.T.R. Estates. But, they did not take any positive steps to prevent the untoward incident. The police did not take any steps to disperse the mob or used any tear gas shells or cane charge or resorted to fire in the air or like acts to scare away the mob. Failure to take preventive steps caused the damage to the property held that the State is failed to discharge its sovereign functions in protecting the property of the Petitioner and the police exhibited complete inaction and slackness in dealing with the situation.

60. Even if it is accepted to be true, as referred to above, under the Hyderabad City Police Act, the police are under statutory obligation to maintain law and order. If the police failed in their duties to do an act in pursuance of the various provisions ordained to enforce the law and order and the police are negligent and commits a tort, the State is vicariously liable for the tortious acts committed by its officials. The claim for compensation for the action complained of would be governed by Article 72 of the Limitation Act. In such a situation, for claiming compensation against the State Government, the limitation prescribed is one year ie., from the date of incident in question.

61. Admittedly, in the present case, the incident has taken place on 21-5-1991

and the present writ petition seeking compensation has been filed on 5-10-1993 ie., beyond one year. In the absence of any mala fides attributed to the police officials or any pleading to the effect that they have abetted commission of offence acted with malice in discharge of their duties, said article can be excluded.

62. It is well settled that Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defenses legitimately open in such actions. (See Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others,

63. In view of the same, it is for the writ Petitioner to take necessary pleas and establish culpable negligence on the part of officials, as established in the case of STATE OF A.P. V. CHALLA RAMAKRISHNA REDDY (25 supra), where State can defend its action by controverting said facts by leading evidence. Further, the State Government has disputed about negligence of its officials in maintaining law and order and extent of damage caused to the property belonging to the writ Petitioner.

64. The certificate issued by the District Collector, Hyderabad cannot form the basis for awarding compensation, since the same is not assessed and issued under any statutory power conferred on the Collector in assessment of the damages. It is not a public document u/s 74 or an official document u/s 78 of the Evidence Act. Hence, the same cannot be taken as a conclusive proof to come to a conclusion that the writ Petitioner suffered a loss to a tune of Rs. 1,51,50,000/- as mentioned in the certificate issued by the Collector to claim compensation. The basis for issuing such a certificate and how he arrived the said figure has to be established by leading evidence in support of it before the competent court in a properly constituted civil suit.

65. From the conspectus discussion and the conclusion reached by us, we are of the view that the learned single Judge committed a serious error in entertaining the writ petition and awarding compensation against the State Government, and also awarding interest, de hors restriction in awarding of interest u/s 34 of the Code of Civil Procedure.

66. WA No. 1407/2000 is accordingly allowed. Consequently, the writ petition filed by the writ Petitioner shall stand dismissed. In view of allowing the writ appeal and dismissing the writ petition of the writ Petitioner, WA (SR) No. 102605/2000 is disposed of in terms of WA No. 1407/2000. There shall be no order as to costs.