

(2023) 09 PAT CK 0072

In the Patna High Court

Case No : Second Appeal No. 338 Of 2014???????

State Of Bihar

APPELLANT

Vs

Sabihuddin Khan

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Rules of Executive Business, 1979 — Rule 12(1)(a)
Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 —
Section 2, 2(c), 2(d), 3, 3(1)
Code of Civil Procedure, 1908 — Section 80, 80(2), 100
Bihar Medical Education Institution (Regulation And Control) Act, 1981 — Section 3, 4
Orrisa General Clauses Act, 1917 — Section 28
Evidence Act, 1872 — Section 65, 77, 78

Citation : (2023) 09 PAT CK 0072

Hon'ble Judges : Khatim Reza, J

Bench : Single Bench

Advocate : Abbas Haider, Ranjay Kumar Singh, Wasi Mohammed, Janardhan Singh, Manoj Kumar, Sandeep Jha?

Final Decision : Allowed

Judgement

1. Heard Mr. Abbas Haider, learned SC-6 for the appellants and Mr. Janardhan Singh, learned counsel for the respondents.
2. This Second Appeal has been filed against the judgment and decree dated 01.03.2014 passed in Title Appeal No. 40 of 2009 by the learned Ad-hoc Additional District Judge-IV, Rohtas at Sasaram, whereby judgment and decree dated 09.06.2009 passed by learned Munsif (Civil Judge-Junior Division), Bikramganj, Rohtas in Title Suit No. 55 of 1997 has been reversed.
3. The Title Suit No. 55 of 1997 was filed by the plaintiffs-respondent 1st set in which it was sought to be declared that the Rajeev Medical Institution, Mukundpur Karanj, P. S. – Dinara, District- Rohtas was taken over by the State Government with all the liabilities and assets of the Institution vide notification no. 597 dated 18.12.1992, and all the documents were taken over under

Chapter-II Section 3 of the Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 and the defendants be restrained by issuance of permanent injunction from withholding payments of the salary of the plaintiffs and cost of the suit which was dismissed on 09.06.2009 with cost by the learned Munsif, Bikramganj, Rohtas.

4. Aggrieved by the judgment and decree dated 09.06.2009 passed in Title Suit No. 55 of 1997, the plaintiffs filed title appeal bearing Title Appeal No. 40 of 2009 before the District Judge, Rohtas at Sasaram.

5. After hearing the parties, the learned Ad-hoc Additional District Judge-IV, Rohtas, has set aside the judgment and decree dated 09.06.2009 passed by the learned Munsif, Bikramganj, and declared that the Rajeev Medical Institution, Mukundpur Karanj, P. S. – Dinara, District- Rohtas has been taken over by the State Government with all the liabilities and assets of the institution vide Government Notification No. 16T 1-11/92.. 597(De.Chi.)/Ch.Shi./dated 18-12-1992 and state authorities were permanently restrained from withholding the payments of the salary of the plaintiffs and other staffs of the institution.

6. The case of the plaintiffs-respondent 1st set is that the Rajeev Medical Institution, Mukundpur Karanj, P.S.– Dinara, District- Rohtas was established on 10.03.1982 under the Bihar Development of Ayurvedic and Unani System of Medicine Act, 1951. The said institute comprised of one college as well as hospital of indigenous medicine etc. and was managed by a duly constituted Managing Committee and had been taken over under Bihar Indigenous Medical Education Institution (Regulation and Control) Act 1982, and after proper verification granted permanent permission to the institution vide its letter no. 213 dated 29.03.1984 and the Managing Committee of the institution was empowered to make appointment of the staffs as per requirement and in the interest of the institution. The said Managing Committee of the institution issued advertisement for appointment to various posts and in pursuance thereof, plaintiffs as well as other applicants applied for the respective post and after proper interview, the plaintiffs were appointed to the posts of Typist, Demonstrator, Compounder and Pujari respectively on 17.08.1989 and accordingly appointment letters were issued in favour of the plaintiffs. The plaintiffs joined on 21.08.1989 on their respective posts.

7. Further, the case of the plaintiffs is that the Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985, (hereinafter referred to as 'The Act of 1985') was enacted and came into force at that time it provided for taking over the Private Medical (Indian System of Medicine) colleges of the State of Bihar by the Government of Bihar. It is further contended that in view of this Act, the State Government took initiative for taking over and initiated process therefor and on the other hand, the employee's union started pursuing the Government to act according to the provisions of the Act of 1985. In this regard, the State Minister of Health Department to the Government of Bihar made an announcement on behalf of the State Government that the institution will be

taken over along with the assets and liabilities including the services of the employees and it was also announced that very soon employees' salary will be paid by treating them as government employees. The plaintiffs have also pleaded that the State Minister also gave a specific order dated 06.12.1990 to the Health Commissioner Cum Secretary on the concerned file that he has ordered for making payment of salary to the employees and further directed to complete all the formalities for the same. Thereafter, vide letter no. 133 dated 23.01.1991, issued under the signature of the State Health Minister, he had directed that institute has to be taken over by the State Government with effect from 26.01.1990 including the payment of the salaries of the plaintiffs.

8. In view of the aforesaid direction of the State Health Minister, the management of institution stopped payment of salary of the plaintiffs along with other employees of the institution. It was assured by the management that payment will be made under the provision of the Act of 1985 by the Government of Bihar. It was further pleaded that some of the employees of the institution filed writ application bearing C.W.J.C. No. 4053 of 1991 before the Hon'ble Patna High Court for payment of their salary. During the pendency of the writ application, defendant no. 1 (The State of Bihar through Collector, Rohtas) agreed to make payment of the salary of the petitioners of the C.W.J.C. No. 4053 of 1991. Pursuant to that assertion a supplementary affidavit had also been filed in the light of assurance given by defendant no. 1. CWJC No. 4053 of 1991 was withdrawn by the petitioners on 25.07.1991 with the permission of the Court.

9. It is further contended that by the order of Government of Bihar, a notification vide Notification no. 597 dated 18.12.1992 was issued under the signature of Under Secretary, Health Department to the Government of Bihar, under Section 3 of the Act, 1985, whereby, the aforesaid Institution was taken over by the State of Bihar along with all the assets and liabilities. In this regard, a public notice was also made by the Health Department of Government of Bihar and the same was published in the daily newspaper "Nav Bharat Times" stating therein that the aforesaid institution has been taken over by the State of Bihar with all the assets and liabilities. It is contended that after taking over institution by the Government (the defendant no. 1), the process for screening the services of the employees was initiated and as per order of Hon'ble Chief Minister, the Commissioner, Health Department ordered the then Deputy Secretary and the Under Secretary to make spot verification including the services of the employees working in the said institution. Vide letter no. 17 dated 13.01.1993, the Under Secretary, Health Department, Government of Bihar informed the Director of the Institute, who was defendant no. 6, in the suit that the Under Secretary along with Deputy Secretary will visit institute for the said purpose in between 16.01.1993 to 18.01.1993 and accordingly on 17.01.1993, spot verification as well as verification of the register and service books of the employees including the plaintiffs was made by the authorities and the authorities found the same genuine and satisfactory. As per order of the Commissioner, the then Under Secretary, Health Department executed deed of

agreement dated 18.01.1993 with defendant no. 6 namely, Director of the institute. The institute had already been taken over by the State Government. The defendant no. 6 was directed not to withdraw any amount from the bank or change the nature of the immovable or movable property of the institution without the prior permission of the Government. It was also agreed that the services of 295 employees including the plaintiffs appointed by the then Managing Committee of the institution is within the liabilities of the institution which had been taken over by the Government. It is also contended that the then Under Secretary of Health Department to the Government of Bihar through Arjun Prasad submitted verification report on 16.05.1993 and recommended for making payment of salary to the employees including the plaintiffs in view of the order and direction issued from time to time in this regard by the authorities concerned. Despite the order of payment and several attempts, persuasion made by the plaintiffs, plaintiffs could not get a single farthing towards their salaries and therefore, they moved before the Hon'ble High Court vide CWJC No. 12520 of 1993 against the defendants but the same was dismissed on 11.07.1994 as the notification of taking over by the Government of the institution was not available with the plaintiffs and so the same could not be filed along with the writ application though the plaintiffs have filed public notice published in daily newspaper namely "Nav Bharat Times" and on this technical ground, the writ application was dismissed. The review application was also filed by the plaintiffs against the order dated 11.07.1994 passed in CWJC No. 12520 of 1993 vide Civil Review No. 128 of 1994 but the same was also dismissed vide order dated 15.02.1996. The plaintiffs moved before the Hon'ble Supreme Court vide SLP No. 16193-16194 of 1996 against the dismissal of the writ application No. 12520 of 1993. The said leave application was disposed of vide order dated 27.01.1997 with an observation that there is obviously a dispute on facts as to whether the concern institution was taken over by the Government or not. As was done by the High Court, we too feel that these matters cannot be decided in these proceedings. Let the parties resort to their ordinary civil remedies. Special leave petitions are dismissed on that score.

10. Therefore, the plaintiffs had filed the title suit bearing Title Suit No. 55 of 1997.

11. On the other hand, on summons defendant nos. 1, 2 and 5, who are appellant nos. 1, 2 and 3, have filed their written statement denying the case of plaintiffs stating therein, that defendant no. 1, 2 and 5 are the state authorities and the other defendants namely defendant nos. 3, 4 and 6 to 12 have been wrongly categorized as the officers of the alleged Rajeev Medical Institute. It is contended that there was no Rajeev Medical Institute in existence and as such address is imaginary one. As the defendant nos. 1, 2 and 5 are the State and its officers, therefore, the services of notice under Section 80 of Code of Civil Procedure is mandatory and non compliance of the same prior to institution of the suit is fatal to the suit.

12. The Hon'ble Supreme Court or High Court never directed that the compliance of the Code of Civil Procedure is not required to be made in the instant matter without complying the mandatory provision as provided under Section 80 of Code of Civil Procedure. It is contended that Rajeev Medical Institute is a private institution and has never been taken over by the Government of Bihar and as such employees of the institution cannot be treated to be government servants.

13. There was no notification of taking over the said institution by the State Government. It is wrong to say that the said institution had been taken over by the Government by its letter no. 909 dated 15.11.1990. The direction of the then State Minister of Health is not in government record and there is no order available in the file. It is well known fact that for provincialisation of any institution, the approval of the finance department as well as of Empowered Committee and the Cabinet is essential.

14. In this connection, neither concurrence of the planning department nor the Departmental Commissioner has been taken and this matter was not brought before the Empowered Committee. Since the plaintiffs are neither state government servants nor the instant institution has ever been taken over by the State Government according to prescribed law under the Act of 1985, the question of payment of salary to them does not arise. The claim of establishment of the such medical institute on 10.03.1982 as Ayurved Chikista Sansthan is not correct.

15. It is further denied that the Bihar State Ayurved Unani Chikitsa Board has ever granted permanent permission to the alleged institution vide letter no. 213 dated 29.03.1984. It is wrongly contended that the Managing Committee of the institution was empowered to make appointment of the staff as per requirement of the institution in the interest of the institution. The said letter no. 213 dated 29.08.1984 is forged and fabricated one. It is further contended that neither any Managing Committee was legally constituted nor the same was approved by the authority. So, the question of making publication of the appointment to the various posts does not arise.

16. It is stated in the plaint that the writ was filed and the said writ was withdrawn and the state government also filed the counter affidavit in the said writ. Defendant no. 1 never agreed to make payment of the employees of the said institution. It is stated that it is wrong to say that any agreement was entered into between the parties and in consonance of the agreement, the plaintiffs withdrew the writ.

17. The agreement which is being relied upon by the plaintiffs was never duly executed nor signed by the authorities and the same stands signed by the persons, who were never authorized by the state to sign the said agreement. Mere agreement cannot be an evidence of taking over unless the Finance Department or any other departments, as stated above, considers and approves the same.

18. It is alleged that by the order of Government of Bihar vide notification no. 597 dated 18.12.1992, the institution was taken over by the Government of Bihar along with assets and liabilities of the institution without following the procedure prescribed under the Act of 1985. The defendants further pleaded that no institution was ever in existence nor the institution made any regular payment to any employee nor there was a proper list of any employee nor the state took over such institution under the Act of 1985, so the question of making payment does not arise.

19. It is vehemently denied that the institution was taken over and after alleged taking over of the institution, the defendant no. 1 proceeded for screening of alleged services of employees. No order was passed by the Hon'ble Chief Minister or the Commissioner of Health Department or the Deputy Secretary or Under Secretary to make spot verification nor the services of the employees alleged to have been working under the institution was ordered to be scrutinized. It is specifically denied that Arjun Prasad, the then Under secretary was ever authorized to take step on behalf of the State; nor he ever took any such step and if any, step is found to be taken by the said Arjun Prasad, that will be treated as illegal, without any authority and also against the provisions of law.

20. No steps were taken under the Act of 1985 nor the institution in question has become part and parcel of the State nor the alleged employees of the institution are the employees of the State. Plaintiffs' claim that buff-sheet have been issued for making of the salary but said buff-sheet was never issued for making payment of salary and there is not even a single sheet of document to prove that the alleged employees of the alleged institution are the employees of the State.

21. On summon, defendant no. 6 appeared and filed his written statement (without verification and affidavit) in personal capacity.

22. Defendant nos. 3, 4 and 7 to 12 have not filed any written statement.

23. The learned trial court after considering the pleadings and evidences adduced by the parties has held that there is no existence of said Rajeev Medical Institute and plaintiffs have failed to prove their appointment letters. It is further held that there is no letter of State Health Minister and there is no 'No Objection Certificate' of Finance Department and Empowered Committee and Bihar State Ayurved Unani Chikitsa Board, Patna never granted any permission by letter no. 213 dated 29.03.1984. The learned trial court further held that the Rajeev Medical Institute was established on 10.03.1982, but plaintiffs have failed to establish that prior to establishment of the institution, approval was granted. Accordingly, the suit was dismissed on 09.06.2009.

24. The Bihar Medical Education Institution (Regulation And Control) Act 1981 (Bihar Act No. 23 of 1982) came in force with effect from 23.01.1982. It extends to whole of the State of Bihar and its Sections 3 and 4 provides as under:-

25. These aspects were mentioned in the Trial Court's judgment but while

reversing the findings of the trial court, the appellate court has not dealt it to substantiate its findings.

26. Being aggrieved by the judgment and decree of trial court, the plaintiffs-respondents filed an appeal before the District Judge, Rohtas at Sasaram vide Title Appeal No. 40 of 2009. By judgment and decree dated 01.03.2014, the appellate Court allowed the appeal holding that as required under Bihar Indigenous Medical Education Institution (Regulation and Control) Act, 1982, all the procedural rules and laws have been properly followed. Other officials of Government of Bihar also time to time inspected the institution vide Exhibit -15 and found functioning of the institution. These documentary evidences clearly established taking over of the institution and functioning of the same. Moreover, the Government officials of the department, who inspected the institution, has supported the case of plaintiffs regarding taking over medical institution and its functioning. Mr. Arjun Prasad, the then Under Secretary is most competent witness and nothing contrary appears in his evidence or in the statement of other witnesses of the plaintiffs to disbelieve his testimony. So, the evidence is credible and trustworthy. Specifically P.W. 12 (Arjun Prasad) has supported the notification of taking over and it has been held that the said medical institute has been taken over by the Government of Bihar and the same is functioning properly. The reply of department given under RTI Act with specific question regarding Rule 3 of the Act of 1985 and rules for acquisition of private institution as well as Exhibit 18 is conclusive proof of the circumstances taking over the said medical institution by the Government. The Under Secretary had also filed counter affidavit vide Annexure-19 in which he also supported the contention of Exhibit 20/A i.e., notification and information supplied under RTI Act. (Exhibit 18). For the said reason, the appellate court has held that the documents filed on behalf of the appellants (plaintiffs), the notification issued by the Government of Bihar and the information given under RTI Act are impeachable evidences to establish this fact that the institution is existing and is working as well.

27. So far as non compliance of notice under Section 80 of Code of Civil Procedure is concerned, this question has been answered by the learned appellate court that the learned trial court has already granted leave to file the suit under Section 80(2) of the Code of Civil Procedure. Since learned Appellate Court has held that the institution has been taken over by the Government and the salaries of the employees of the institution have been withheld, hence, the appellants (Plaintiffs) are entitled to get the reliefs as claimed.

28. Being aggrieved by the judgment and decree of the appellate court the defendants-appellants filed instant Second Appeal. After considering the substantial questions of law, this court has framed following substantial question of law:-

(I) Whether the finding recorded by the appellate court below that the said Rajeev Medical Institute, Mukandpur Karanj, P.S.- Dinara, District- Rohtas had been taken over by the State Government of Bihar and its employees are

employees of the State Government is perverse in the absence of any documentary evidence, in the nature of the notification, issued by the competent authority in this regard?

29. Before going to the substantial question of law. It is necessary to deal with the provision of taking over the Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 in which Section 2 deals as under:-

"2. Definition.-In this Act unless the context otherwise, requires

(a) "College" means a Private Medical College of Indian System of medicines which has been permitted to function under the Bihar (I.S.M.) Educational Institutions (Regulation and Control) Act, 1981 (Bihar Act No. 20 of 1982).

(b) "College body" means any Association or Managing Committee or any institution registered under the Societies Registration Act, 1860 (Act XXI of 1860), vested therein the management and/or ownership of any Private Medical College.

(c) "Notified Order" means an order notified in the Official Gazette, and

(d) "Prescribed" means prescribed by this Act or by the Rules made under this Act."

30. Section 3 of Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985, provides as under:-

"3. Taking over of Private Medical (Indian System of Medicine) Colleges. (1) The State Government may, by a notified order and from the date mentioned therein, take over a College and the management and control thereof shall thereupon be exercised by the State Government in such manner as specified in the said order.

(2) All the assets and properties of the college and the college body whether movable or immovable including land, building, library, laboratory and dispensary workshop, store, instruments, machinery, vehicles, cash balance, reserve fund, investments, taxes, furniture and others shall, on the date of take over stand transferred to and vested in, and be deemed to have come into possession of the State Government.

(3) All the liabilities and obligations of the College under any agreement or contract entered into bona fide before the date of taking over shall devolve and shall be deemed to have devolved on the State Government."

31. On plain reading of section 2(c) which deals with an enumerate conditions on which notified order from the date of mention therein, taking over colleges and the management and control, the law shall thereupon be exercised by the State Government in such manner as described in the said order. To see define notified order which means an order notified in the Official Gazette.

32. The Bihar and Orrisa General Clauses Act, 1917 defines a notification as "a notification in the Gazette". Section 28 of the said General Clauses Act provides:

"28. Publication of orders and notifications in the Gazette.- Where in any Bihar and Orrisa Act or Bihar Act or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified, or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Gazette."

33. Section 3(1) of the Act of 1985 provides that the State Government may, by a notified order and from the date mentioned therein, take over a College and the management and control thereof shall thereupon be exercised by the State Government in such manner as specified in the said order. Section 2(c) is an integral part of the Act which defines the "Notified Order" means an order notified in the Official Gazette, and "Prescribed" means prescribed by this Act or by the Rules made under this Act.

34. So far notification of taking over of the Medical Institute "Exhibit 20/A" is concerned, the said notification had been produced before the Appellate Court which was earlier filed, photocopy of the said notification was marked as "X" for identification and Exhibit 18 is the information supplied through RTI Act by the Public Information Officer, Deputy Director, Desi Chikista Nideshalaya, Patna, Bihar, which supports the claim of the plaintiffs-respondents.

35. It is admitted case of the parties that the notification dated 18.12.1992, Exhibit 20/A was not published in the Official Gazette.

36. The requirement of Section 2(c) of the Act relating to publication in the Official Gazette is mandatory. In this regard, the Hon'ble Supreme Court has held in the case of I.T.C. Bhadrachalam Paperboards vs. Mandal Revenue Officer reported in 1996 (6) SCC 634 that requirement under Section 11 of the Act relating to publication of Government order in the Gazette was mandatory and enactment requires an Act (making a Government Order) to be done by a Government only in manner prescribed therein, then non compliance with the mandatory, statutory requirement will make the Act (making of government order) invalid and conclusively the government order cannot be considered as a valid and binding one nor as a representation held out by the Government, creating any right to seek the benefit of that Government order by invoking the principle of promissory estoppel against the Government.

37. Therefore, the provision contained in Section 3(1) read with Section 2 (c) and 2(d) requiring publication of any notified order in the official gazette which applies to Section 3(1) framed in the said Act has to be treated mandatory. The fact that a particular Act may not concern to the general public, but may affect only a specified class of employees and students is not a ground to exclude the applicability of the mandatory requirements of publication in the official Gazette, to that of notified order in absence of any exemption in Section 3(1) of the Act.

38. Mr. Abbas Haider, learned counsel for the appellants submitted that entire approach of the learned lower appellate court misconstrued the pleadings of the parties as well as the evidences which resulted into wrong findings that Rajeev

Medical Institute has been taken over by the State Government with liabilities and assets of the institution, but the fact is that the institution has never been taken over by the State Government and, as such, no any notification was ever issued by the State Government for taking over the State Rajeev Medical Institute. The learned counsel placed reliance on deposition of P.W. 12 (Arjun Prasad), the then Under Secretary of Department of Health, Government of Bihar, who was original defendant no. 6 and also filed separate written statement without verification and affidavit, who was also alleged author of Exhibit 20/A i.e., notification of taking over vide Notification No. 597 dated 18.12.1992 which was produced as additional evidences before the appellate Court as Exhibit 20/A.

39. Learned counsel for the appellants further submits that the learned appellate court held that the evidences of P.W. 11 and P.W. 12 are very crucial and important for the plaintiffs. It is further wrongly held by the appellate Court that P.W. 12 (Arjun Prasad) has fully supported in his evidence that as per direction of the Government and department, he inspected the hospital and verified service books and supported the case of the plaintiffs regarding taking over the medical institute and its functioning and learned appellate court has held that he is the most competent witness and nothing contrary in his evidence or in the statement of other witnesses of plaintiffs recorded to disbelieve their testimony. So, their evidence is credible and trustworthy. Specifically P.W. 12 (Arjun Prasad) has supported the notification of taking over.

40. Learned counsel for the appellants contended that on the contrary P.W. 12 (defendant no. 6) Arjun Prasad has stated in his cross examination that the signature on the notification was forged. He further deposed in his cross examination that Kedar Nath Pandey was the Director of the Institute and notification was published after obtaining forged signature. He further contended that he had not filed counter affidavit in the High Court in Writ Case filed by Sabihuddin Khan and others. He has also stated in his cross examination that in Civil Review No. 01 of 1994 (Sabihuddin Khan & Ors vs. The State of Bihar & Ors), he has not signed any agreement. He further stated in his cross examination that press release regarding notification was under false signature and he has not issued any notification till now and this institute has not been taken over.

41. Paragraph 15 of his cross examination reads as follows:

In paragraph 14 of his cross examination, he deposed before the trial court as under:-

Further paragraph 18 of his cross examination reads as under-

42. The counsel for the appellants submits that in view of the evidence adduced by the author of the exhibit 20/A, the findings of the appellate court is perverse and the said evidence adduced by P.W. 12 has demolished the case of the plaintiffs. It is further submitted that photo copy of exhibit has been marked as Exhibit 20/A. As per Section 65 of the Evidence Act, a document in terms of

Section 65 of the Evidence Act is to be proved by a person, who is acquainted with the handwriting of the author and in this connection, he relied upon a decision in the case of Rameshwar Dass vs. State of Punjab reported in AIR 2008 SC 890. Learned counsel further submitted that note of undertaking must be in consonance of rule 12 1(a) of Rules of Executive Business, 1979. Concurrence of finance was necessary as well as decision of Council of Minister. Learned counsel for the appellants further referred to Section 2 of Act of 1985 in which college means a Private Medical College of Indian System of Medicine which has been permitted to function under the Bihar Medical Education Institution (Regulations and Control) Act, 1981 and Section 3 of taking over Bihar Private Medical College is not in consonance with the aforesaid Act. It is further contended that the said notification was not published under Section 2(c) in the Official Gazette.

43. Learned counsel for the appellants has placed reliance on the decision of this Court in the case of Brahmeshwar Prasad Vs. The State of Bihar reported in AIR 1950 Pat 265 wherein, the Division Bench of this court has held as under:-

"Under Section 78 of Indian Evidence Act, Acts, Orders or Notifications of the Executive Governments may be proved by any document purporting to be printed by order of such Government. Therefore, the original Notification in the Gazette of India, of the 26th signed by the Governor-General may be said to be properly proved, but the document signed by the president is not headed "Gazette of India" There is nothing to show if it has ever been printed in the Gazette of India. It purports to be an order of the President, but it does not purport to have been published by order of Government. It might have been printed by any one and it is, therefore, no proof of the order of the President. Such an order, if not proved under S. 78, could be proved of course by the production of the original or by production of a certified copy under Section 77, of the Evidence Act, or possibly even by an affidavit by a responsible official."

44. It is submitted by the learned counsel for the appellants that plaintiffs' witnesses P.W. 12 has clearly stated in his cross-examination that the press release regarding notification was under false signature, he never issued any notification and Rajeev Medical Institute has not been taken over.

45. Learned counsel for the appellants has placed reliance on decision of Apex Court in the case of P. John Chandy and Co. (P) Ltd. Vs. John P. Thomas reported in (2002) 5 SCC 90 in support of his contention.

46. Learned counsel for the appellants submitted that learned appellate court has wrongly relied upon evidence of P.W. 11 and 12, which is contrary to the evidence of P.W. 12 (Arjun Prasad). The appellate Court has not appreciated the oral and documentary evidence properly and this court has to re-appreciate the evidence and record its own conclusion for reversing the orders passed by the learned appellate court and has placed reliance on the decision of Hon'ble Apex Court in the case of Ramlal vs. Phagua reported in 2006 (1) SCC 168.

47. In the case of Somakka Vs. K.P. Basavaraj reported in (2022) 8 SCC 261, the

Hon'ble Supreme Court has held that the First Appeal has to be decided on facts as well as law. In the First Appeal, parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself on all issues and decide the case by giving reasons.

48. Learned counsel submits that lower appellate court has given wrong findings with regard to notification dated 18.12.1992 and evidences of P.W. 12, who was the alleged author of the said notification. It is further submitted that the perverse approach of the learned appellate court in arriving at the findings would give rise to substantial question of law and has placed reliance upon a decision in the case of Azgar Barid Vs. Mazambi reported in (2022) 5 SCC 334 as well as Rajasthan State Tpt Corpn. & Anr vs Bajrang Lal reported in (2014) 2 Supreme 380. The Hon'ble Supreme Court in the case of Rajasthan State Tpt Corpn. (supra) has held as under:-

"There is no prohibition for the High Court to entertain the Second Appeal even on question of fact where factual findings are found to be perverse."

49. Learned counsel for the appellants submitted that it is well established that if a finding of fact is bad in law, the same vitiates the order. He has placed reliance on the decision in the case of Damadilal Vs. Parashram reported in (1976) 4 SCC 855.

50. On the other hand, learned senior counsel Mr. Janardhan Singh appearing on behalf of the contesting respondents contended that a bare perusal of Section 100 C.P.C. shows that the jurisdiction of High Court to entertain the Second Appeal is confined to appeal which involves substantial question of law, specifically set out in the memo of appeal and formulated by this court. He contended that in the present case the substantial question of law formulated is not at all a substantial question of law.

51. It is contended that in support of their claim the plaintiffs altogether examined 12 witnesses as well as exhibited some documentary evidence i.e., photocopy of notification marked as "Exhibit X" for identification. The P.W. 10 (Plaintiff no. 1) in his deposition specifically mentioned that State Minister had taken decision for taking over the college and accordingly notification was issued on 18.12.1992. Prior to that, the State Minister, Government of Bihar, took a decision for taking over the college with its full assets and liabilities with all teaching and non teaching staffs vide its letter no. 133-34 dated 23.01.1991 and accordingly process was started, which were marked as exhibit 1, 1A with objection and exhibit 1B and exhibit 1C and thereafter notification no. 597 dated 18.12.1992, but the said notification was neither available to the plaintiffs-respondents nor produced by the defendants before the trial court in spite of the availability of notification in the concerned department. In absence of documentary evidence, the learned Trial Court decided the issue no. 3, 4, 5, 7 & 8 against the plaintiffs-respondents and in favour of defendant no. 1, 2 and 5 of the suit and passed the judgment and decree dated 09.06.2009 in Title Suit No.

55 of 1997 against the plaintiffs-respondents. The plaintiffs-respondents aggrieved by the aforesaid judgment and decree preferred an appeal bearing Title Appeal No. 40 of 2009 before the District Judge, Rohtas at Sasaram. The learned lower appellate court keeping in view all the factual and legal aspect of the case, pleadings and submissions of parties ascertained/determined the points in issue for proper decision and adjudication and framed mainly two issues:-

i. Whether the said Rajeev Medical Institute, P.S.-Dinara, District- Rohtas has been taken over by the Government and its employees are Government employees?

ii. Whether the judgment and decree of the learned court below is just and proper or required any interference?

52. The learned counsel for the appellants contended that with regard to point no. 1 of the judgment of the lower appellate court, it is clearly mentioned that in trial court photocopy of notification of taking over of the Medical Institute had been produced and marked as "X" for identification supported by paragraph 11 and 12 and later on the same was received under RTI Act 2005 and prior to that there was no means to obtain the same and appellants had throughout declined to produce the same despite the availability of notification no. 597 dated 18.12.1992. The said notification was brought on record by way of an additional evidence which was marked as "Exhibit 20/A" by the appellate court which removes the cloud of doubt over the case. It is contended that after perusal of notification Exhibit 20/A, it is evident that said notification was issued under the authority of Part II Section 3 of the Act of 1985 and the college, in question, has been taken over with effect from 26.01.1990. It is further submitted that the notification "Exhibit 20/A" was issued under the signature of Under Secretary namely, Arjun Prasad (P.W. 12), defendant no. 6 and the same was sent to government press for publication in the gazette of Government of Bihar but it was neither published in official gazette nor brought on record in the suit either at the stage of trial or at the appellate stage.

53. Learned counsel for the respondents submitted that the appellants State authority taking the latches/negligence of their own for non publication of notification in the official Gazette and even availability of the same in the department denies the existence and despite appellate court's judgment, the appellants have filed the present Second Appeal before this court on the non-est ground of substantial question of law.

54. Learned senior counsel vehemently argued that the photocopy of notification of taking over the medical institute has been marked as "X" for identification in the suit, P.W. 11 and P.W. 12 in their deposition supported the same much prior to that and thereafter Under Secretary had also accepted the same.

55. It is contended that P.W. 12, namely, Arjun Prasad Under Secretary to the Government of Bihar under whose signature notification to take over the college was issued, disclosed that higher officials were putting pressure upon him for non

disclosure of notification and adverse disclosure against the plaintiff as the same is evident from Exhibit 19 as well as finding recorded in the appeal under its appellate jurisdiction is neither perverse nor against the material collected in course of trial of the suit.

56. Learned counsel for the respondents has placed reliance on a decision of the Apex Court in the case of Gurnam Singh Vs. Lehna Singh reported in (2019) 7 SCC 641, wherein, the Apex Court referred the judgment of Ishwar Dass Jain (2000) 1 SCC 434, in which it was held that, "there are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible".

57. In such view of the matter, the appellate court has held that notification exhibit 20/A has been supported by P.W. 12 (Arjun Prasad) in his evidence whereby Rajeev Medical Institute P.S.- Dinara, District- Rohtas has been taken over by the State Government with all its liabilities and assets of the institution vide notification no. 16T 1-11/92.. 597(De.Chi.)/Ch.Shi./dated 18-12-1992. This findings of fact is arrived at on the basis of relevant evidences.

58. Further, learned senior counsel for the respondents relied upon a decision of the Hon'ble Supreme Court in the Case of Mohd. Amirullah Khan and others vs. Md. Hakumullah Khan and others reported in (1999) 3 SCC 733 wherein it is observed that while hearing the Second Appeal the High Court ought not to have re-appreciated the evidence and reversed the findings of fact arrived at by the lower appellate court.

59. Learned counsel further submits that in the case of Veerayee Ammal Vs. Seeni Ammal Co. Ltd., reported in AIR 2001 SC 2920, the Hon'ble Supreme Court has held that a High Court, on second appeal, cannot go into questions of fact, however erroneous findings of fact recorded by the courts of fact may be interfered with.

60. Learned counsel for the respondents has placed reliance on decision of this court in the case of Lalmuni Devi & Ors Vs. Jagdish Tiwari & Ors reported in 2005 (1) PLJR 128 in support of his contention that a document in terms of Section 65 of the Evidence Act is to be proved by a person, who is acquainted with the handwriting of the author thereof.

61. In the case of Rajendra Agricultural University Vs. Ashok Kumar Prasad and others reported in 2010 (1) SCC 730, the Hon'ble Supreme Court has held that the requirement that the Statute should be published in the Official Gazette is an integral part of the process of "Statute making" under Section 36 of the Act and held that it is mandatory and not directory. Until publication in the Official Gazette, the Statute will be considered as still being in the process of being

made. It is incomplete and invalid.

62. The Hon'ble Supreme Court in the aforesaid judgment at paragraph 19 held as under:-

"As noticed above, several reasons might have contributed to making of a statutory provision providing for publication of all Statutes in the Official Gazette. All those reasons may not apply or exist in regard to making of an individual statute. But once the law lays down that publication of a Statute in the Official Gazette is a part of the process of making a statute, the object of making such a provision for publication recedes into the background and becomes irrelevant, and on the other hand, fulfilment of the requirement to make public the Statute by publication in the Official Gazette becomes mandatory and binding."

63. In view of the above discussions as well as decision of the Hon'ble Supreme Court referred to above, in my opinion, the learned Appellate Court has failed to consider the effect of non publication of notification in the Official Gazette which is mandatorily to be published in the official gazette. The said notification of taking over of the said Institute under Section 3(1) read with Section 2(c) was required to be published. The learned Appellate Court committed an error in holding that the Rajeev Medical Institution has been taken over by the State with all the liabilities and assets of the institution vide notification dated 18.12.1992 and also the plaintiffs were declared to be entitled to get relief in terms of the aforesaid notification of Government of Bihar dated 18.12.1992 which was not published in the official gazette as admitted by the plaintiffs-respondents.

64. In the facts and circumstances of the case, the substantial question of law formulated by this Court is answered in favour of the appellants.

65. Accordingly, the judgment and decree dated 01.03.2014 passed in Title Appeal No. 40 of 2009 by the learned Ad-hoc Additional District Judge-IV, Rohtas at Sasaram is hereby set aside and the judgment and decree of the trial court is hereby affirmed.

66. Accordingly, this appeal is allowed.

67. The parties shall bear their own cost.

68. Pending application(s), if any, stands disposed of.