

(1986) 09 GUJ CK 0019

In the Gujarat High Court

Case No : Civil Revision Application No's. 472 and 473 of 1983 and 313 and 314 of 1985

State of Gujarat

APPELLANT

Vs

Mangal Traders

RESPONDENT

Date of Decision : 17-09-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 11, 115, 9
Constitution of India, 1950 — Article 226 , 227
Criminal Procedure Code, 1973 (CrPC) — Section 100 , 165
Essential Commodities Act, 1955 — Section 12, 3, 6, 6C, 6E

Citation : AIR 1987 Guj 234 : (1987) 1 GLR 514

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : J.M. Thakore, General and Malek, for the Appellant; S.M. Shah, for the Respondent

Judgement

1. These revision applications between the same parties involving the same questions are, with the consent of parties, heard And disposed of together as they involve common questions on similar facts, In all these matters, arising from interim injunctions granted by the Civil Court against the seizure of essential commodity, the State Government original defendant is the petitioner and the opponent is a licensed dealer/producer of the essential commodity namely edible oil. The opponent is running two oil mills: Asha Oil Mill and Ramdevji Oil Mill. There was a search on 1-10-1982 in these Oil Mills resulting into seizure of essential commodities. Civil Suits Nos. 863/1982 and 864/1982 were filed and the ex parte interim orders were obtained on 1-10-1982. Civil Misc. Appeals Nos. 130. /1982 and 131/1982 were preferred before, the District Court against the exparte orders. The District Court, after allowing the parties to complete the pleadings and affidavits, heard the appeals on merits and dismissed the same confirming the interim relief granted by the trial court. Revision Applications Nos. 472/83 and 474/83 are preferred by the State Government.

They are admitted. In those two matters, the only interim relief prayed was stay of further proceedings in the suit and there was no stay prayed in respect of operation of the injunction. (This speaks volume for the care the State Government has failed to take) with the result that the essential commodities seized in these two cases have been released by interim order of the court and have been disposed of by the opponent plaintiff.

2. On 3-2-1985, there was another search and seizure of the essential commodities and, therefore, Civil Suit No. 135 of 1985 was filed by the same opponent-plaintiff and after hearing both the sides, the trial court passed an order of interim injunction as prayed on 14th Feb. 1985 restraining the authorities from giving effect to the seizure order and from obstructing the plaintiff from dealing with and disposing of the goods in question. However, this time the learned Trial Judge had imposed a condition to furnish solvent security of the value of the goods thus released, namely Rs. 8 lacs. Against this order, the authorities preferred Civil Misc. Appeal No. 44 of 1985 and the plaintiff also preferred Civil Misc. Appeal No. 45/1985 because the plaintiff felt aggrieved by the condition of security. The appellate court dismissed the appeal of the State and allowed the appeal of the plaintiff, thus, confirming the interim injunction and removing the condition of security. Against these two orders arising from the similar facts, the State has preferred two revision applications being Civil Revision Applications No. 313/1985 and 314/1985. Since the material facts in all these cases are similar, the facts of Civil Suit No. 135 of 1985 may be stated.

3. On 3-2-1985, the Additional District Magistrate issued a search warrant authorising the five named officers of the Civil Supplies Department to carry out search

(i) District Supply Officer;

(2) Chief Supply Inspector and three other Inspectors were authorised to do so. As the information was led before the Addl. District Magistrate of the suspected commission of offence of violation of Cls. 15, 18 and 23 of, the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981, it was essential to enquire into the said suspected offence and, therefore, these Officers were authorised and required to search the stock of groundnut, groundnut seeds, groundnut, oil and all items in connection with the production of groundnut oil along with the books of accounts and other documents relating to production of groundnut oil in Ramdevji Oil Industries, Jamnagar. With this search warrant, the Officers went to the premises of Ramdevji Oil Industries of the plaintiff and as a result of the search, the following defects were noticed.

(1) In the stock of groundnut seeds, there was a deficit of 11,198 kgs.

(2) Shortage of 11,127 kgs. of groundnut.

(3) There was excess of 4625 kgs. of groundnut oil. However, having regard to that day's crushing situation, really there was a shortage of 3191 kgs.

- (4) Average percentage recovery of groundnut oil was less.
- (5) Electricity consumption was more than the average consumption.
- (6) In the gate passes of outgoing groundnut oil, time was not being mentioned.

Therefore, it appeared that there was breach of Cls. 18(4)(i) and 23 of the Control Order and condition No. 4 of the licence and, therefore, the existing stock of 28240 kgs. of groundnuts and 12500 kgs. of groundnut oil was seized and taken into the possession of the Government and it was directed that the said stock was not to be dealt with except under the instructions of the Collector, Jamnagar and the said stock was required to be preserved. This seizure order is at Ex. 6/4.

4. There is another seizure order of the same day Ex. 6/6 in respect of :

- (1) Packed tins 536 of groundnut oil;
- (2) Loose groundnut oil about 150 tins in two tanks;
- (3) 548 bags of groundnuts, approximately 20824 kgs.
- (4) 24 bags of groundnut seeds approximately 3520 kgs.

5. The above articles were also seized as there was difference in the actual and the registered stock and discrepancy in the production being less compared to the consumption of electricity and not mentioning the time in the gate passes and erasures in stock registers. Ex. 12/1 is the Panchanama of the said seizure.

6. The suit and the injunction applications were filed on 6-2-1485 and on 14-2-1985, the learned Trial Judge, after hearing both the sides, passed the following order.

"The application of ad interim injunction is hereby allowed and the ad interim injunction is granted as prayed till the decision of suit.

It is, however, clarified that the defendants are not prevented from carrying the inquiry in accordance with the Essential Commodities Act or any law for the time being in force in pursuance to the search and seizure made by them.

The defendants shall also be at liberty to pass even final order in pursuance to the above said inquiry but they are ordered to be restrained from enforcing the said orders till the final decision of the suit.

The plaintiff is also ordered to furnish solvent surety of Rs. 8 lacs (Rs. Eight lacs only) within 15 days from the date of this order failing which injunction which is granted would automatically stand vacated."

7. The injunction granted was as prayed for. Therefore, it is necessary to look at the prayers in para 8 of the injunction application Ex. 7. They read as follows:

(portion in vernacular is omitted - Ed.)

Thus, by this order, not only a prohibitory or preventive injunction is granted, but a mandatory injunction is granted by virtually directing the release of the seized essential commodities. The learned Trial Judge had taken some care by directing that solvent security of Rs. 8 lacs be furnished so that in the event of the State succeeding in the suit, at least security is available.

8. The second prayer i.e. prayer (b) is very curious and may appear to be innocuous. However, it has mischievous tendencies and consequences. Such a vague and general injunction of anticipatory nature can never be granted. Such injunction that any one and every one shall act according to law may appear to be strictly in accordance with law, but that is the mandate of the Legislature to ever one and every authority and the court is not required to give any such anticipatory injunction that the authorities shall not carry out any raid or search except in accordance with law and except for reasonable cause and after satisfying the requirements of law. Such injunction of the Court is absolutely unjustified. There is no discussion in the lower Court's judgment as to why such injunction is granted. That prayer (b) could never have been granted and must be vacated forthwith irrespective of all other contentions of either side. Similar is the prayer (b) in other suits and that order also is required to be vacated so far as prayer (b) is concerned. By such anticipatory injunction, a smart litigant can totally and effectively frustrate the whole purpose search and seizure which have necessarily to be sudden and without any prior notice. By such innocuous looking, anticipatory order, a search and seizure are once prevented whole damage is done and such plaintiff will have sufficient time and opportunity to frustrate the purpose of search and seizure irreparable and irreversible harm will be done to the defendants and there will be no point in dismissing the injunction application or the suit at a later stage.

9. So far as prayer (a) is concerned regarding the actual release directed by the Court, and the actual release having taken effect and the opponent plaintiff having disposed of the goods which were under seizure, Mr. Shah, learned Counsel for the opponent had earlier submitted that the seized goods have already been disposed of and the amounts representing sale proceeds shall be available and the prepared to give solvent security to the satisfaction of the authorities. On the other hand, the learned Advocate General appearing for the State had submitted that the bank guarantee at least is necessary. However, later on, the learned Counsel for the plaintiffs Mr. S. M. Shah has submitted that the plaintiffs were not prepared to give consent to any order of even solvent security and, therefore, the Court may pass appropriate orders on inchoate.

10. At one stage, the opponent plaintiffs had filed an application that the plaintiffs desired to withdraw the suits and that record be sent to trial court to enable them to withdraw the suit and in that event, the present revision application would not survive. That request was opposed by the learned Advocate General stating that under the interim orders of the Court, the goods have been released and if the opponents plaintiffs fail in these revision

applications or in the suits, and withdraw the suits or revision applications it would be amounting to failing in the suits and, therefore, the plaintiffs would be required to effect restitution. therefore, these revision applications are required to be heard and decided and decided on merits.

11. The learned counsel for the opponents-plaintiff's has also filed a note on 12-9-1986 producing a certified copy of the judgment dated 10-9-1986 in another Civil Suit No. 1090 of 1980. That suit also arose as a result of the same seizure of 1-10-1981 After the said seizure, a show cause notice for cancellation of the licence was issued and ultimately the licence was cancelled by the Collector and that order of the Collector cancelling the licence was also challenged and that suit has been finally decreed in the following terms.

"(i) the plaintiff's suit is decreed.

(ii) It is hereby declared that the impugned notice dated 3-12-1982 and the impugned order dated 7-12-1982 are illegal, mala fide, arbitrary, without jurisdiction or authority, violative of principles of natural justice, non est and nullity.

(iii) The defendant and its officers and servants are hereby restrained by permanent injunction from implementing and operating or from giving effect to the impugned notice or order of the Collector, Jamnagar dated 7-12-1982 and they are also further restrained from obstructing the plaintiff from doing his business in any manner.

(iv) The defendant shall bear their own costs, if any, and shall also pay the costs to the plaintiff."

12. It is submitted that while quashing and setting aside the show cause notice for cancellation, and the order of cancellation of licence the trial court in that Special Civil Suit has also decided about the validity and legality of the seizure of 1-10-1982 and it is, therefore, submitted that these findings are res judicata between the parties and that the said fact may be considered while deciding these revision applications. It may be noted that the substantive prayer in the present suit is about the legality and validity of the search and seizure and in the subsequent suit, the substantive prayer is regarding the validity of the show cause notice and the order of cancellation of licence. By the judgment in the second suit, it cannot be said that the first suit has been decided nor can it be said that the second suit has been finally decided and, therefore, that the finding cannot be said to be in any manner res judicata between the parties nor it is binding to the parties in the present proceedings and the High Court is not bound to go by that decision and the High Court has to decide these revision applications on merits.

13. The learned Advocate General appearing for the State has submitted that in the matters and questions arising under Essential Commodities Act and the Control Orders there under, the Civil Court has no jurisdiction whatsoever to

entertain a Civil Suit and in any case, the Civil Court should not interfere with any action or proceeding under that law by any interim order. He has submitted that the Act of seizure by the authorities by its very nature is an interim measure and the aggrieved party has an opportunity to satisfy the Collector that the seized goods are required to be released wholly or in part and that there is no breach committed by it. It is also open to the party to apply to the Collector. That pending further consideration and disposal of the proceeding, essential commodity may be provisionally released on such conditions as may be necessary with a view to protect the interest of the State and rushing to the Civil Court and the Civil Court entertaining such suit an injunction application is not only barred, but is highly improper as it would interfere with the course of legal proceedings under the Essential Commodities Act and Control Orders. He has relied on the provisions of S. 6E of the said Act, which has been introduced by amendment in 1976. It reads as under : -

"Whenever any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto, the Collector or, as the case may be, the judicial authority appointed u/s 6 shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other court tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of such property."

He has submitted that in the present case, the essential commodities are seized under the Gujarat Control Order and the Collector alone has jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of such property and the Court does not have such jurisdiction as expressly provided in Section 6E.

14. Mr. Suresh M. Shah, learned Counsel for the opponents-plaintiffs has submitted that the search and seizure are absolutely illegal and there is non-compliance of the statutory provisions of Cls. 15, 18 and 23 of the Control Order and that the search warrant under the Criminal Procedure Code was illegal and defective. He has further submitted that there is no seizure in fact as no actual possession was taken and the goods had remained in the custody of the opponents-plaintiffs and, therefore, S. 6E has no application. He has further submitted that there is no provision in the Act for challenging the legality of the seizure and since there is no remedy provided under the Act, the Civil Suit is competent and the jurisdiction of the Civil Court is not barred. It is further submitted that when there is breach of statutory provisions, jurisdiction of the Civil Court is never barred. He has also submitted that when two Courts have concurrently confirmed the interim injunction, there is no scope for any interference in a revision u/s 115 of the Civil Procedure Code.

15. On the question of prima facie case, of the opponents plaintiffs, the fundamental question that arises is whether the Civil Court has jurisdiction to entertain such suits and grant any relief. If there is no jurisdiction, the plaintiffs are bound to fail in the suit and then there is no prima facie case for the plaintiffs

to succeed in the suit. Mr. Shah submitted that if this issue is finally decided at this stage in the revision application arising out of the interlocutory order, the whole suit is likely to fail and, therefore, the proper procedure would be to direct the trial court to hear and decide the issue regarding jurisdiction as a preliminary issue and not to decide that question in this revision application. Such plea may sometimes be upheld in the facts and circumstances of a given case. But there cannot be such general practice to be followed in every case. While granting the injunction, the plaintiffs have to make out a prima facie case on all material issues in the suit in order to show that they are likely to succeed in the suit. On the other hand, the defendant is entitled to show that the plaintiffs are not likely to succeed in the suit and, therefore, the interim injunction shall be refused. Therefore, while deciding the injunction application and the revision arising from such application, the Court has to consider even prima facie case as to whether the plaintiffs are likely to succeed or likely to fail in the suit.

16. In the present case having regard to the express provisions and very categorical and clear words of Section 6E, there is no escape from the conclusion that no Court has any jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of any essential commodity in pursuance of a Control Order made under S. 3 of the Act and it is only the Collector or the authority appointed under S. 6C who has such jurisdiction and this provision is made notwithstanding anything contrary to any law for the time being in force. There could not have been more categorical and clearer and stronger statutory expression for coming to the conclusion regarding exclusion of jurisdiction of the courts in the matters of seizure of essential commodities in pursuance of a Control Order. In fact even less categorical, less clear and less stronger expressions have been construed to exclude the jurisdiction of a Court by simply stating that the action or the order made by the authority shall be final. In this provision, the Legislature has been extra careful, forceful and cautious in making its intention and mandate absolutely clear. It is not a valid concept that only a Civil Court can do justice and Civil Court has all pervasive and universal jurisdiction. It is open to the Legislature to constitute specialised forum to deal with the proceedings under the Special Act. This specialisation, has its own advantages and it also may have some disadvantages. So also, any system of administration of justice including the Civil Court. It is for the Legislature to consider in which matters, special forum shall have exclusive jurisdiction and in such matter, Civil Court shall not have jurisdiction and shall not interfere. There is no reason to believe that Civil Court or for that matter, any Court or any authority, is only competent to do justice and that the other system or forum will not do justice. When the Legislature has entrusted certain powers and functions to an authority, that authority must be allowed to exercise the same without any interference by outside authority or the Court except such other higher authorities provided in the legislation or in the Constitution. Just as all the authorities are required to respect and abide by any order of the Court or Civil Court and to challenge the same only by way of appeals in the higher forum,

similarly the Civil Court has also to realise limitations of its jurisdiction and respect the authority and jurisdiction of the special forum created by the legislation.

17. The learned Advocate General has referred to two decisions of Madhya Pradesh and Madras High Courts on S. 6E of the Act.

18. In the case of Khemraj Jugraj Vs. The State of M.P., , the Madhya Pradesh High Court held that the disabling provision u/s 6E supersedes and overrides any enabling provisions that may be there in any other law, be they, in the Criminal Procedure Code or in any other Act in the matter of making orders with regard to the possession, delivery disposal or distribution of such property i.e. essential commodity, seized in pursuance of an order made under S. 3 of the Act. Madhya Pradesh High Court, even went t to the extent of holding that even the jurisdiction of the High Court is barred because the words "any other court" used in Section 6E relates to the High Court also observing that it cannot be gainsaid that in the hierarchy of the Courts, High Court is also one and as such, is fully covered under the words "any other Courts". Therefore " Madhya Pradesh High Court held that the jurisdiction of the High Court is also barred by virtue of Section 6E of the Act.

19. This is presumably because the High Court would be exercising the same jurisdiction which the lower courts would be exercising whose orders are under challenge before the High Court because the High Court cannot have larger power than the powers of the lower courts from which the proceedings reach the High Court. In the present case also, the High Court in these revision applications, cannot exercise any larger or different jurisdiction than that of the Civil Court in the present suit. However, we make it clear that S. 6E does not exclude the constitutional jurisdiction of the High Court.

20. In the case of P. Sivaputhiran v. State 1982 Cri LJ 556, the Madras High Court held that Section 6E of the Essential Commodities Act prohibits any order being made by any court regarding distribution, delivery, custody and disposal of the commodity. It, further, observed that:

"when there is an hierarchy of judicial and quasi-judicial forums which are contemplated to deal with an order regarding delivery of commodity siezed, the aggrieved party cannot directly move the High Court for favourable order under S. 482 Cr. P. C."

In that case, the jurisdiction invoked was that of the High Court under S. 482 of the Criminal P.C. and even the inherent jurisdiction of the High Court was held to be excluded by Section 6E. In that case, the Court held that :

"This is a seizure that had been contemplated by the provisions of the Act X of 1955 and when the competent authority has seized the articles and procedure has been prescribed u/s 6E it is that procedure that has to be followed because it is a special enactment which has been more or less inducted by the Central

Legislature."

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when an enactment has prescribed a procedure that has to be followed with respect to the remedial measures through the hierarchy of executive authorities before actually a court has to be approached and when the expression used is any other court" this court hold that any other court includes also this court and, therefore, merely because of the existence of S. 482, it does not mean that the petitioner herein can come and have his remedy, which he could have had if he had moved other authorities contemplated under the provisions of the Act, which evidently he has not done but has rushed to this court."

From these two direct decisions on Section 6E coupled with the categorical and strong expression of the legislature in Sec. 6E there is no escape from the conclusion that in matters of seizure of essential commodities, the jurisdiction of the Civil Court is completely and absolutely barred.

21. The learned Counsel for the respondent has relied on some decisions of the Privy Council and the Supreme Court, In the case of AIR 1940 105 (Privy Council) , the question was regarding adjudication under the Sea Customs Act, 1978 and there, the provision for exclusion of jurisdiction of the Civil Court was that every order passed in appeal subject to the power of revision shall be final. Even in that case, after observing that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred and even where it is excluded, the Civil Court will have jurisdiction to examine the cases where the provisions of the Act have not been complied with. The Privy Council proceeded to observe as under :-

"By Ss. 188 and 191 a precise and self contained code of appeal is provided in regard to obligations which are created by the statute itself, and it enables the appeal to be carried to the supreme head of the executive Government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the Civil Courts. The Privy Council held that the jurisdiction of the Civil Court to entertain a challenge on the merits of that decision was clearly excluded.

22. The learned Counsel for the respondent has relied on the sentence that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine the cases where the provisions of the Act have not been complied with and he has submitted that while effecting the seizure, the provisions of the Act have not been complied with and, therefore, the Civil Court has jurisdiction to decide about the contention of validity and seizure.

23. Above case was followed by the Bombay High Court in the case of Abdul Maid v. P. R. Nayak AIR 1951 Boin 440 and by the Supreme Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, and the following are the material propositions laid down by the Supreme Court.

"(1) Where the statute gives a finality to the orders of the special tribunals the

civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with nor the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive: to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates" a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

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(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry."

24. From these propositions, it is clear that it is for the legislature to decide in which class of cases and how far the jurisdiction of the Civil Court is to be excluded and it is open to the legislature to exclude the jurisdiction of the Civil Court irrespective of any limitation. If the provision is merely to say that the order shall be final, it may enable the civil court to find out whether there would be some classes of cases in which the civil court can still exercise jurisdiction. But, when the legislature uses more categorical and clear language to absolutely and totally bar the jurisdiction of the civil court or for that matter, any other court, it would not be open to the civil court to still hold that it will exercise jurisdiction even though it is expressly taken away. As observed by the Supreme Court in proposition (6) above, the scheme of the particular Act must be examined. As observed in proposition (2), when there is an express bar of jurisdiction of the court, adequacy of remedy under the Act would not be decisive to substantiate the jurisdiction of the civil court. Only when there is no express exclusion that the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary. Therefore, having regard to the express categorical mandatory and clear language of Section 6E of absolute and total exclusion of the jurisdiction of the court, no further enquiry is necessary: or permissible to find out the remedies of an" aggrieved party under the Act. The aggrieved party under the Act has all his remedies before the Collector subject to appeal and or writ petition under Arts. 226 and 227 of the,

Constitution. But Civil Court cannot assume jurisdiction in the matters covered u/s 6E of the Act.

25. The above cases were again referred to and considered by the Supreme Court in the case of Union of India (UOI) Vs. A.V. Narasimhalu, , the Supreme Court observed as under : -

"But an erroneous decision of the Customs Authority cannot be said to be reached without jurisdiction merely because it may be shown in some collateral proceeding to be wrong. Normally, an action of an administrative authority interfering with the right to property may be challenged by resort to a civil court. Yet in the case of a right which depends upon a statute, the jurisdiction of the civil court to grant relief may by express provision or by clear implication of the statute be excluded. Where a statute re-enacts a right or liability existing at common law and the statute provides a special form of remedy, exclusion of the jurisdiction of the civil court to grant relief in the absence of an express provision, will not be readily inferred. Where, however, a statute creates a new right or liability and it provides complete machinery for obtaining redress against erroneous exercise of authority, jurisdiction of the civil court to grant relief is barred. Liability to pay a duty of customs is not a common law liability : it arises by virtue of the Sea Customs Act in respect of any grievance arising in consequence of enforcement of that liability, machinery has been provided by the Act. Having regard to the complicated nature of the questions which arise in the determination of liability to pay duty of customs the Legislature has invested the power of determining liability and the manner of enforcement thereof upon a specially authorised hierarchy of tribunals. an appeal lies against the order of the Assistant Collector of Customs against an order imposing duty as well as an order refusing to refund duty and the grievance may be carried to the Central Board of Revenue. In our judgment, the jurisdiction of the civil court is by clear implication of the statute excluded."

26. In the present case, on reasonable ground a search warrant was issued and it was found that there was a shortage in the essential commodities and the electricity consumption was in excess of what was shown to be the production and there was no mention of time in the gate passes. Because of all these factors, seizing authorities had reason to believe that the plaintiff had been committing breach of the licensing order and conditions of licence and, therefore, the stock of the essential articles was liable to confiscation and in that view of the matter, the stock was seized. Such seizure is necessarily an interim measure and the party has a right and opportunity to satisfy the Collector that the alleged shortages or irregularities or discrepancies were erroneous or that they were innocent and also have a right to raise all defences and satisfy the authority. The authority may or may not accept all or some of the defences. The authority may come to the conclusion that the party in a given case has satisfactorily explained everything and, therefore, no case for confiscation is there. However, that would not mean that the seizure was without jurisdiction. At the time of seizure, what is

required is reason to believe and at the time, of confiscation, there has to be proof and not mere reason to believe. Unless and until the breach is proved and a case is made out for confiscation, the goods cannot be confiscated. Therefore, at the time of seizure, the standards of proof of confiscation cannot be applied. At the time of seizure, the seizing authority has to form a reasonable belief and must have reason to believe about the breach of the law. Such decision of the seizing authority may sometimes be erroneous, but it cannot, be said to be without jurisdiction. It is his subjective satisfaction and his belief and reason to believe. If the party has any grievance against the order of seizure, he may approach the Collector and ask for release or provisional release and get relief. If he fails to get the relief at the hands of the Collector, he may approach the High Court under its constitutional jurisdiction, but the rights and liabilities and remedies which are created under the Act cannot be by-passed and civil court cannot exercise the jurisdiction in the matters of seizure which is clearly barred by Section 6E of the Act. More so, the civil court should refuse to exercise jurisdiction of issuing interim injunction when its own jurisdiction is not there or is strongly doubted. Much more so, it would be highly improper to issue a mandatory order at interim civil stage of the release of the goods. The civil court or any other court while granting any interim order, must take care to see that it; the other side ultimately succeeds, its interest is also properly protected. Any interim order passed without taking this care would cause irreparable loss to the other side.

27. The learned counsel for the respondent has also relied on the judgment in the case of Lala Ram Swarup and Others Vs. Shikar Chand and Another, . It was a matter under the Rent Act and the Supreme Court observed as under :-

"The jurisdiction of the civil courts to deal with civil causes can be excluded by the Legislature by special Acts which deal with special subject matters, but the statutory provision must expressly provide for such exclusion, or must necessarily and inevitably lead to that inference. The bar created by the relevant provisions of the statute excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity. One of the points which is often treated as relevant in dealing with the question about the exclusion of Civil Courts" jurisdiction, is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is : does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions? Applying these two tests it appears that the jurisdiction of the civil courts is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16. Where, however, a plea seeks to prove that the impugned order is a nullity in the true legal sense, that plea does not come within the mischief of the bar created by Ss. 3(14) and 16."

28. Relying on the above decision, the learned Counsel for the respondent has submitted that the impugned order of seizure is a nullity and it goes to the root of the matter. This order of seizure cannot be said to be a nullity in any manner. The seizing officer has the authority to seize and has reason to believe having found the facts mentioned in the seizure order regarding breach of the Control Order and the conditions of licence. Moreover, the second test applied by the Supreme Court namely clear and unambiguous words intended to exclude the jurisdiction of the civil court and adequate and satisfactory alternative remedy to the party that may be, aggrieved by the relevant order are satisfied in the present case. In fact, the intention is so abundantly clear that the second test also would not be necessary in the present case. But that is also satisfied by the fact that the person aggrieved can represent before the Collector for release of the goods even provisionally on all the available grounds including illegality in the seizure and if the Collector does not give him relief, he can have further recourse according to law and ultimately to the High Court under its constitutional jurisdiction. Therefore, this judgment also does not help the respondent plaintiff for invoking the jurisdiction of the civil court.

29. The learned Counsel for the respondent has also relied upon the judgment in the case of Husein Miya Dosumiya Vs. Chandubhai Jethabhai and Another, . It was a case under the Tenancy Act. In that case, the Bombay High Court observed that the jurisdiction of the civil court has been only ousted under S. 85(2) in respect of valid orders made by the Mamlatdar. It is only when the Mamlatdar makes an order with jurisdiction, or, in other words, makes an order for the purposes of the Act or an order required by the Act, that order cannot be questioned in a civil court and if the order made by the Mamlatdar is not for the purposes of the Act nor required by the Act, such order is incompetent or ultra vires and that order is a nullity and it can be challenged in a civil court. The jurisdiction of the civil court would be peripheral and only to see that the order of the Mamlatdar is ultra vires and the civil court would not be deciding any question which is required to be settled, decided or dealt with by the Mamlatdar , under the Act. In the present case, what the respondent plaintiff wants the civil court to do is to deal with the question and decide regarding the validity of the seizure. Such question has to be decided only by the Collector and the authorities under the Act or ultimately by the High Court under Art. 226 or 227 of the Constitution. It cannot be said that the order of seizure is a nullity. The Division Bench of the Bombay High Court observed that :

"The Tenancy Act has set up a definite machinery which provides for possession being given to the tenant in cases where he has been dispossessed by the landlord and where he alleges that he is a tenant and entitled to possession. The civil court should be most reluctant to interfere with the working of that machinery, and in our opinion the civil court should not pass an order of injunction unless a strong prima facie case has been made out by the plaintiff that the order made by the revenue authorities is an ultra vires order."

The Bombay High Court further observed that :

"It would lead to an impossible situation if a landlord were to rush to the civil court on the mere allegation that the order of the Mamlatdar is "ultra vires" get an injunction from the civil court.

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Every litigant has a right to put a suit on the file of a court, he can have the luxury of having it ultimately dismissed, but every litigant has not the right, having put a suit on file to get an injunction from the Court."

30. As regards reason to believe so as to enable the officer to make the seizure, the learned counsel for the respondent has referred to the case of Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., . It was a case under Income Tax Act and it was held that the seizing authority:

"must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist."

Relying on this, it is submitted that the Officer had no reason to believe justifying the seizure and, therefore, the seizure was illegal and the plaintiff was entitled to the return of goods and the civil court was justified in passing the order. As stated earlier, there was sufficient material for the Officer to be subjectively satisfied and to have reason to believe about the necessity of the seizure. The seizing officer need not be absolutely certain that the breach of the Control Order. is committed, being committed or likely to be committed. The test is whether a prudent man in the circumstances would be warranted in the belief about such breach. It is purely a subjective test. Such test is satisfied in this case having regard to the alleged discrepancies and irregularities recorded in the seizure order.

31. The learned Counsel for the respondent has submitted that the seizing officer had seized the entire stock and not only such stock or quantity in respect of which the breach was alleged to have been committed and, therefore, the action of seizure of the entire stock was definitely without jurisdiction. For this purpose, he has relied on a judgment of the Delhi High Court in the case of Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium and Others, . It is to be noted that it is a case where the High Court was exercising writ jurisdiction. Moreover, there was a specific case that the firm was alleged to have withheld sale of 1525 tons of aluminium products in contravention of the Control Order. It was a case of specific quantity having been withheld in contravention of the Control Order and, therefore, the Delhi High Court had observed that the seizure of entire stock could not have been made. In the present case, the goods which made the seizing officer to seize the entire stock showed that there were large scale irregularities and large scale shortages and, therefore, this was not a case of contravention in respect of a particular quantity or consignment and, therefore, that judgment is of no avail in the present case.

32. The learned Counsel for the respondent has referred to clause 26 of the Control Order which reads as follows: -

"26. Power of entry, search, seizure etc. (1) Any Civil Supply Officer not below the rank of a Supply Inspector, any Revenue Officer not below the rank of a Dy. Mamlatdar, or any police officer not below the rank of Sub-Inspector and any other officer not below the rank of a class 11 Gazetted Officer authorised by the State Government in this behalf, may with a view to securing compliance with this Order and to satisfying himself that this Order has been complied with -

(i) enter and search any premises, vehicle, vessel or other conveyance with such assistance as may be necessary.

(ii) ask for any person all necessary questions.

(iii) examine any book or documents.

(iv) search and so far as may be necessary for that purpose, detain any person or seize-

(a) any stock of essential articles in respect of which he has reason to believe that a contravention of any of the provision of this Order has been, is being or is about to be committed.

(b) any package, covering or receptacle in which such essential article is found.

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential articles if he has reasons to believe that such animal vehicle, vessel or other conveyance is liable to be forfeited under the provisions of the Act.

(d) any books of accounts or documents which in the opinion of such person may be useful or relevant to any proceeding under the Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extract there from in the presence of an officer having the custody of such books of accounts or documents.

(v) take, or cause to be taken, the weight or measure of all or any of the stocks of essential articles found in any place.

(vi) direct by an order in writing any person who owns or is in possession of any stocks essential articles in respect of which he has reason to believe that a contravention of the provisions of this Order has been is being or is about to be committed, not to remove or dispose of in any manner such stock of essential articles and the packages covering or receptacle in which such essential article is found and any animal, vehicles, vessel or other conveyance used in carrying such essential articles without further direction from the officer making such order.

(2) The provisions of S. 100 of the Code of Criminal Procedure Act, 1973 (Act 2 of 1974) relating to search and seizure shall apply to search and seizure under this clause also:-

Provided that if any such place or premises be found locked or unoccupied or unattended by or on behalf of the owner or occupier, the same may in the presence of two witnesses be broken open and entered into for all or any of the purposes aforesaid."

33. Reading sub-cal. (a) of Clause (1)(iv), the learned Counsel for the respondent submitted that the Officer if at all could seize only such stock of essential articles in respect of which he has reason to believe that the contravention has been, is being, or is about to be committed and it is further submitted that in the present case, the case of the authority is that the contravention has been committed and, therefore, only such stock could be seized which has the direct nexus of contravention. It is submitted that in respect of the existing stock, there is no breach whatsoever and, therefore, the authority could not have found any reason to believe contravention for seizure of existing stock and, therefore, the seizure is without jurisdiction and illegal. It is submitted that in a given case, if dealer or producer had disposed of essential commodity in black market and committed breach of the Control Order, the goods which have been sold and disposed in black market could be seized, but not the existing stock in respect of which there could be no reason to believe for any contravention. It is not possible to agree with such contention. Once the seizing officer is satisfied that there are irregularities, discrepancies or malpractices in dealing and disposal of the essential commodity, it is not only his power, but also his duty to seize the goods. The power of seizure is not confined or restricted as is sought to be advanced by the learned Counsel for the respondent. That only such goods are to be seized which are directly in contravention of Control Order. The words used in clause (a) are seizure of any stock of essential articles in respect of which he has reason to believe contravention. Therefore, the power to seize is for any stock of essential articles. "Essential articles" are such as specified in Schedule 1. Groundnut, groundnut shelled or unshelled and groundnut oil are amongst the specified essential articles. Therefore, any stock of essential articles can be seized because in respect of those essential articles viz. edible oil, groundnut shelled and unshelled, contravention is believed to have been committed. The Seizing Officer has to address a question to himself as to whether in respect of these three articles namely groundnut, groundnut oil and groundnut shelled and unshelled, any contravention has been committed and once he has reason to believe that in respect of these articles, contravention has been committed, it is his duty to seize such stock. It is not possible to give restricted meaning to the words "in respect of as is sought to be contended by the opponent-plaintiff.

34. In the case of Tolaram Relumal and Another Vs. The State of Bombay, , this phrase "in respect of " occurring in S. 18 of the Bombay Rent Act was considered and it was construed to mean "relating to or with reference to". Putting these words, the articles which could be seized are in relation to or with reference to which the contravention has been committed and those articles are edible oil and groundnut. This phrase "in respect of" goes with the essential articles and not

with a part of the stock.

35. The learned Counsel for the respondent has also relied on a case of Subhas Motichand Sheth Vs. The State of Karnataka, , wherein it has been held that seizure can be only of those goods in respect of which contravention is alleged to have been in fact committed. Other goods in respect of which there is no contravention cannot be seized and confiscated. In that case, out of total quantity of 90 bags of sugar, 57 bags were sold away while in transit and 33 were in stock. There was contravention in respect of 57 bags as they were sold in transit and the same could be seized as well as confiscated. But as there was no contravention in respect of 33 bags, the same could neither be seized nor confiscated. even if the ratio of this judgment is applied, as in the Delhi case (supra), the contravention is in respect of specific quantity whereas in the present case, the alleged contravention is large scale and in respect of unspecified goods and the only things found by the seizing officer are substantial shortages and irregularities in maintaining record and discrepancies in the consumption of electricity as compared to the production figures. In these circumstances, it would be impossible for the seizing officer to identify and quantify any quantity or stock and, therefore, when he has arrived at his subjective satisfaction reasonably, it cannot be said that he has no reason to believe for seizing the existing entire stock. It is not that he has seized the stock on mere suspicion. The seizure is based on certain facts which he has found. The party may be ultimately in a position to satisfy the authorities that the seizing officer was in error in fact or even in law or partly in such error. but that would not vitiate the seizure which is within the jurisdiction of the seizing officer. In Narendra Kumar Vs. The State of Bihar and Others, , the Division Bench of Patna High Court has also taken the view which I am taking. In that case, it has been held that :

"The expression in relation thereto" in our opinion, means in relation to the essential commodity which is the subject-matter of the order under S. 3; it does not and cannot mean only that part of the essential commodity in respect of which an offence is committed. If that would have been the intention of the framers of the Act, they would have used the expression "in respect of which an offence is committed" somewhere in the section.

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In our opinion, a licensee who does not maintain correct account of the stocks commits contravention of one of the conditions of licence and thus also of the other in respect of the entire stock and not only in respect of the quantity, which is not entered in the stock register. He contravenes the order by not maintaining correct account and thus makes himself liable to be punished under S. 7 of the Act."

I am in agreement with the above observations and my view is fortified by the view of the Patna High Court.

36. The learned counsel for the opponents-plaintiffs has submitted that the jurisdiction of the civil court is not taken away having regard to the provisions of S. 12(b)* which was introduced by amendment in 1970, *S. 12(b) reads as under:

"No Civil Court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Govt. or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer."

On the basis of this, it is argued that the jurisdiction of the civil court is accepted by the Act itself and its power to issue injunction has also been accepted by the Act itself and the only restriction is in respect of granting ex parte injunction and the civil court can entertain the suit and also grant injunction after notice to the Government and its officers. After introduction of S. 12(b) by the amendment of 1970, S. 6E was introduced by amendment in 1976 and in the restricted class of cases of seizure, a specific, clear and strong legislative intention is manifested against the jurisdiction of civil court or any other court to deal with seizure of essential commodities made under the Control Order and it is provided that no court shall have the jurisdiction to make the orders with regard to the possession, delivery or disposal of such seized property. In view of this clear categorical insertion of S. 6E, the suit of present nature challenging the action of seizure and claim for release of the seized essential commodities is clearly barred and S. 12(b) is of no assistance to the plaintiff in the present case.

(*It seems that the reference is to S. 12B which was introduced by amendment in 1974 -Ed.)

37. One more contention is required to be seen. Clause 26(2) of the Control Order quoted earlier provides that the provisions of S. 100 of the Criminal Procedure Code relating to search and seizure shall apply to search and seizure under this clause also. Relying on this provision, it is submitted that under S. 100 of the Criminal Procedure Code, the person carrying out the search has to be armed with warrant and such warrant can be issued only under S. 165 of the Criminal Procedure Code and that could authorise only a police officer. It is not possible to agree with the contention of the opponent's plaintiffs. By Clause 26(2) only the provisions of S. 100 of the Criminal P. C. are incorporated and not the provisions of S. 165 or Chapter XII of the Code. Under S. 100, there is no such requirement. This question has been directly decided in the case of Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, . Section 22 of Foreign Exchange Regulation Act provides that the provisions of the Code relating to searches shall so far as may be, apply to searches directed under S. 37(1) and the Supreme Court held that the methodology prescribed for carrying out the search provided in S. 165 of the Criminal Procedure Code has to be generally followed. It is to be noted that in

that case, all the provisions of Criminal Procedure Code relating to search were applicable. Even then the Supreme Court has observed that the provisions in S. 165 have to be generally followed to the extent possible and it cannot be said that S. 165 has been incorporated in S. 37(2). In the present case, only S. 100 is included and, therefore, this case is stronger than the case before the Supreme Court. Therefore, all the provisions of Criminal P. C. cannot be brought into picture having regard to the express provision of applying S. 100 only. Moreover, having regard to the language of Clause 26(2) of the Control Order, there is no need of a search warrant. When any Civil Supply Officer not below the rank of a Supply Inspector and other specified Officers is authorised to search and seize, the question of search warrant would arise only when place liable to search or inspection is closed and the Officer wanting to make the search wants free ingress into the closed premises or place. In the present case~ there was no such obstruction or closure, Therefore, there is no question of the entry of the Supply Officers being bad or illegal. Section 93 of the Criminal Procedure Code, contemplates that a District Magistrate (which includes Addl. District Magistrate) can issue a search warrant. Section 6 of the Criminal Procedure Code also includes Executive Magistrate within the meaning of Criminal Courts under the Code. Section 20(2) provides that an Additional District Magistrate has also the powers of the District Magistrate.

38. In view of this legal position, there is no defect in the warrant or search and the Civil Supply Officers can carry out the search without warrant under CL 26(i) and in the present case, they were also holding a valid warrant under Clause 26(2). Therefore, there is no defect on any count in the warrant and the search nor can it be said that the warrant is issued by the Additional District Magistrate without application of mind.

39. In view of the aforesaid discussion, the plaintiffs have no prima facie case to challenge the order of seizure in any of these suits and the plaintiffs have no prima facie case to succeed in the suit because the civil court cannot give them any relief. Even if civil court has jurisdiction, in the facts and circumstances of the case, the plaintiffs have no prima facie case to attack the order of seizure. The officers had the jurisdiction and authority and also a search warrant to carry out the search and seizure and having regard to the facts, the Officers can reasonably form the opinion and reason to believe that it was necessary to seize the entire stock and the plaintiffs have their remedies under the Act before the Collector and the State Government and ultimately before the High Court under its constitutional jurisdiction to get the goods released from seizure and also from confiscation. I make it clear that judgment is not to be understood in the sense that all the acts necessary for confiscation or taking any other penal action against the plaintiffs are established nor is this judgment to be construed mean that any person aggrieved and seeking justice has no remedy to seek justice nor is it my finding that the seizure is without any error. Even if the seizing officer has erred, it is within his jurisdiction and only remedy is to approach the Collector to get the goods released from seizure even provisionally and by an

interim measure, and the Collector is duty bound to consider the same in accordance with law and in cases where he thinks fit to release the goods to impose appropriate conditions to safeguard the interest of the State and the ultimate order that may be passed. A citizen is never to be left without any remedy and seeking justice, but it would be wrong to assume that only the civil court can give justice. Having regard to the experience gained in the working of the Essential Commodities Act, the legislature has thought it expedient and necessary to exclude jurisdiction of the civil court in the matters of seizure of essential commodities and it is the duty of everyone to abide by the law enacted by the legislature~ and the courts have to give effect to the same.

40. One of the contentions is that since the authorities had not removed the seized goods from the place of the petitioner, there is no actual and physical seizure of the goods and, therefore, S. 6E is not attracted. Having regard to the nature and bulk of the goods, seizure necessarily has to be such as may be reasonably practicable in the circumstances in which bulk of groundnut, groundnut seeds, groundnut oil in tins was seized and it would be impossible to remove the same. The seizure order in no uncertain terms recites that these goods are seized and taken into custody of the Government and they are allowed to remain at that place with a clear direction not to deal with those goods. Therefore, there is clear and actual seizure and this argument has no factual and legal basis.

It is not correct to say that there is no provision to challenge seizure. In the adjudication proceedings, it is open to the party to contend that the seizure is illegal and, therefore, the goods cannot be confiscated. It is open to a party to get the goods released from seizure and the Collector has power to release the goods even provisionally if a case is made out for the same and by imposing appropriate conditions so as to secure the interest of the public. The Collector may or may not release the goods provisionally or finally, but his orders are subject to further scrutiny and review by the higher authority or by the High Court in its constitutional jurisdiction.

41. There is no merit in the contention that -there is non- compliance with any statutory provision. The provision for seizure is found in CL 26 and other relevant clauses 15, 18 and 23 of the Control Order. There is no breach committed by the authority in complying with the statutory provision. The breach is committed by the plaintiffs which has attracted the provisions of seizure.

42. In view of the above, these revision applications are required to be allowed by quashing the impugned interim orders of the lower courts in all the three suits and on such reversal of the orders, the plaintiffs who have obtained benefit under such orders are required to restitute and put the State in the same position in which it was prior to passing of the order. However, having regard to the fact that it has become physically impossible as the plaintiffs have already disposed of those goods the money value of such goods has to be substituted and the plaintiffs must ordinarily put the amount under seizure by actual deposit.

However, having regard to the fact that considerable time has passed, in first two suits, almost two years and in other suit more than 11/2 years, it appears that the ends of justice would be satisfied if the plaintiffs are directed to furnish solvent security to the concerned authorities to their satisfaction so as to meet with the liability that might accrue as a result of passing of the orders of confiscation, penalty etc. There is considerable force in the submission of the learned Counsel for the petitioner that ordinarily the money value of such goods shall be substituted so as to effect full restitution if the orders are reversed and the plaintiffs should not get away merely because they have disposed of the goods. In any case, the bank guarantee would be the minimum that should be directed. In this case, I would have done the same thing, but having regard to the time that has already passed, I direct the plaintiffs to give solvent security to the satisfaction of the concerned authorities in respect of the goods taken out from seizure under the interim orders of the Court and more particularly in view of the fact that one order of confiscation has been set aside by Civil Court in another suit and until such decree is set aside or fresh proceedings are taken and fresh order is passed, the bank guarantee or money would cause comparatively more hardship and can be avoided by providing for security. Such security shall be furnished within a period of one month from the date of writ of this Court. On the failure to carry out these directions of the Court, they would be liable not only for breach of carrying out the directions of this Court, but also to effect full restitution by a direction to deposit the amount of the value of the goods disposed of by the plaintiffs under the interim orders of the Court. If the plaintiffs fail to furnish the solvent security as directed earlier, they would be abusing the process of the Court as the orders under which they had obtained release of the goods are reversed. There is every justice and reason in directing that the party who has taken benefit of such order has to make full restitution and restore the position that was prevailing prior to such order and status quo ante must be restored. Otherwise, even though the plaintiffs fail to obtain the relief legally, they get away with such relief in fact. That cannot be countenanced by any court of law. This alternative direction (for deposit of the money value of the goods which shall come into effect after one month if the solvent security is not furnished) is given in view of the fact that earlier, a note was filed for withdrawal of the suits. Thus, once having got back and disposed of the goods, the plaintiffs were not interested in establishing the legal right to get back the goods. This is fortified by the fact that on earlier occasion, the learned Counsel for the plaintiffs had clearly made a statement that the plaintiffs are prepared to give solvent security to the satisfaction of the authorities. Now, the learned Counsel has stated that the plaintiffs are not prepared to give any such concession. It, therefore, appears that there is an attempt to abuse the process of the Court and not to respect the directions of the Court.

43. In the result, all the four revision applications are allowed and the injunction applications in all the three suits are dismissed and the interim relief's granted in the suits are vacated and reversed and the plaintiffs in each of the three suits

are directed to give solvent security to the concerned authority for the amount of money value of the goods got released under the interim orders of the Court. Such security shall be furnished to the satisfaction of the concerned authority within one month from the date of writ of this Court. If the plaintiffs fail to comply with these directions within one month from the date of writ, the plaintiffs are directed and held liable to deposit the amount of money value of the goods with the concerned authority so as to abide by the ultimate orders that may be passed under the Act in respect of these goods. Breach of any of these directions will, besides attracting actions for committing breach thereof, will also attract actions for executing these directions.

44. Rule made absolute in each of these four revision applications with costs Throughout.

45. Revision allowed.