
(1997) 05 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : L.P.A. (W) No. 39, 60 and 64 of 1989

State of Jammu and Kashmir

APPELLANT

Vs

Dr. Karan Singh and Another

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 363
Evidence Act, 1872 — Section 115

Citation : AIR 1997 J&K 132

Hon'ble Judges : M. Ramakrishna, C.J;R.C. Gandhi, J

Bench : Division Bench

Advocate : N.A. Kakroo, General, A. Kapoor, AAG, S.K. Anand, R. Pant, H. Rehman, S. Shukla, Baldev Singh, Seema Shekhar and P.C. Sharma, Govt, for the Appellant; S.S. Ray, D.P. Gupta, Bedar D Ahmad, A. Ranganathan, A. Verma and D.S. Thakur, for the Respondent

Judgement

M. Ramakrishna, C.J.—These three Letters Patent Appeals arise out of a common judgment made by the learned single Judge on June 27,

1989 in writ petition No. 122 of 1984. Since these appeals arise out of the said common judgment, therefore, they are clubbed together and

disposed of by this common judgment. Dr. Karan Singh, who was writ petitioner in writ petition No. 122 of 1984, feeling aggrieved by the

judgment made by the learned single Judge, has sought for declaration that he (appellant in LPA (W) No. 60 of 1989) is full owner of the jewellery

and ornaments (articles mentioned in Appendix-A and 8 of the appeal) and also further direction/order to restore and return all these articles,

ornaments and jewellery to him. He has accordingly sought for modification of the judgment made by the learned single Judge by setting aside the

finding and directions of the learned single Judge, who in his finding has directed that respondent No. 2 (in LPA No. 60 of 1989) alone can pass

orders to determine the disputes, and such other order and direction and writ that this High Court may deem fit to grant.

2. In LPA (W) No. 39 of 1989, presented by the State of Jammu & Kashmir, aggrieved by the judgment made by the learned Single Judge on

June 27, 1989 in writ petition No. 122 of 1984, the appellant (State) has sought for the following prayer:--

(i) to set aside judgment and order dated June 27, 1989 passed by the learned single Judge of this High Court in writ petition No. 122 of 1984

and dismiss the writ petition as brought by the writ petitioner (respondent No. I in the appeal) with costs and

(ii) Any other relief which this Hon'ble court may deem just and proper in the circumstances of the case, including awarding of costs against

respondent No. I.

3. In L.P.A. (W) No. 64 of 1989, presented by Union of India, the appellant has sought for the following prayer :--

(i) to set aside the judgment and order dated June 27, 1989 passed by the learned single Judge in writ petition No. 122 of 1984.

(ii) to dismiss the writ petition of respondent No. 1 (writ petitioner) with costs; and

(iii) Any other relief which this High Court may deem just and proper in the circumstance of the case be awarded to the appellant and against

respondent No. I (writ petitioner).

4. Facts of the case :

The salient facts of the case as could be gathered from the pleadings in the writ petition and the grounds taken in the appeals for purposes of

appreciating the questions of law to dispose of these three appeals, are as follows :--

It is an admitted fact that by virtue of Instrument of Accession dated Oct. 26, 1947, the State of Jammu and Kashmir came to be acceded to the

dominion of India and by a letter of Secretary, Ministry of Home Affairs, the writ petitioner (Dr. Karan Singh) being the only son of former

Maharaja of State of Jammu & Kashmir (Shri Hari Singh) was recognised as the Ruler under Article 366 of the Constitution of India by the Union

of India on July 10, 1961. By another letter dated December 24, 1952. addressed by the then Minister of States (Home Affairs) New Delhi. Shri

Hari Singh. the erstwhile Maharaja was entitled to receive privy purse annually in a sum of Rs. ten Lakhs free from all taxes. On June 9, 1949. Shri

Valabhbhai Patel, the then Minister of States (Home Affairs) addressed a letter to the erstwhile Maharaja Hari Singh asking the Maharaja to send

a list of his private property including securities and thereafter the said property was accepted as private properties of his Highness, the Maharaja

of Jammu and Kashmir and the same would continue as his (Maharaja's) private properties. The Government of India had also agreed occupation

of Kashmir House at Bombay by the Maharaja Hari Singh free of rent for his life time. In the letter dated December 24. 1952, the Government of

India had also agreed to extend exemption from the provisions of the Indian Arms Act to the same extent as at present in favour of the Maharaja

and that Maharaja's motorcars had to bear red number plates as at that time and further that his highness had to continue to enjoy exemption from

the payment of sea customs duty as at that time etc. etc.

5. The jewellery and gold ornaments of Jammu 'Toshkhana' (Treasury) were brought over to Srinagar and kept in 'Toshkhana' at Srinagar in the

year 1951. By a letter dated August 27, 1973, Dr. Karan Singh (writ petitioner) requested the Chief Minister of Jammu and Kashmir State for

granting certain items of moveables on loan and by letter dated Sept. 2, 1973, the Chief Minister of J & K State proposed loan of certain items of

moveables subject to certain conditions. By letter dated December 5, 1973, the Government of J & K allowed certain items of moveables on loan

subject to certain conditions.

6. It is stated that certain items of articles have been kept in the Museum which is controlled and run by Dr. Karan Singh at Jammu. A Trust

(Charitable Trust known as Hari-Tara Trust) is run by Dr. Karan Singh in which these items of articles granted by way of loan by the Government

of Jammu and Kashmir are kept under certain conditions. It is needless to say that by virtue of the Indian Constitutional Amendments (26th

Amendment) Act, 1971, hereinafter called as (the Act of 1971, the Parliament terminated the recognition already granted to such Rulers and

abolished privy purses and extinguished all rights. liabilities and obligations in

respect of Privy Purses.

7. It is further stated that the then Chief Minister, of the Jammu & Kashmir State is said to have made a public declarations and Press statement

claiming that certain boxes containing jewellery and other precious stones, gold and silver ornaments and articles would be disposed of and that he

had invited international valuers and dealers of Jewellery to evaluate the certain items of jewellery and heir-looms, contained in the boxes and kept

in the 'Toshkhana' (Treasury) for making sale thereof. Therefore, Dr. Karan Singh, appellant in LPA (W(No. 60 of 1989, made a representation

to the Ministry of Home, Union of India on December 2, 1983 for adjudication and declaration that the property mentioned in Annexure-C to the

writ petition was rightfully owned by him (Dr. Karan Singh) and is his personal property, as according to him, these are heir-looms of me royal

family and not the property of the Jammu and Kashmir Slate. The said representation had been rejected by the Government of India by an order

made on Sept. 24, 1984. Thereafter, the writ petitioner presented a Review petition before the Union of India for reconsideration of the order

made on Sept. 24, 1984, It is stated that the Union of India had invited information of the Central Board of Directors (Taxes) on the issue as to

whether these moveables were heir-looms or not and that they were private properties of the family of the erstwhile Maharaja Hari Singh.

Thereafter, the writ petitioner (Dr. Karan Singh) moved writ petition No. 122 of 1984 seeking for the following prayer:--

a) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions directing the respondents not to

deal with, appropriate, display or alienate the property mentioned in Annexure 'C' and 'other articles' to the writ petition;

b) issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or directions restraining the respondent No. 1

either directly or through their agents, servants or otherwise and/or dealing with, appropriating, selling, displaying or in any other manner alienating

the properties referred to in Annexure-C and ""other articles"" hereto;

c) issue orders to seal the property lying in Toshkhana as per Annexure 'C' and 'Other articles' and appoint a Receiver from the Government of

India to keep the said property in safe custody till the petition dated 2nd

December 1985 pending before respondent No. 2 is finally disposed of as per law;

d) award the costs of the writ petition;

e) issue appropriate directions to respondents No. 2 to decide and adjudicate upon the petition dated 2nd December 1983 of the petitioner

claiming the ownership of properties referred to in Annexure 'C' and 'other articles' expeditiously and issue such other orders fixing the date by

which respondent No. 2 gives its decision;

(ea) to issue appropriate writ, order or direction in the nature of Certiorari, quashing the rejection order dated 24th Sept. 1984 of respondent No.

2 and purported rejection of the Review application dated 9-10-1984.

(eb) to issue appropriate writ, order or direction declaring the heir-looms in the custody of Toshkhana, Srinagar as per Annexure 'C' and 'other

articles' as the personal property of the petitioner:

(ec) to issue appropriate writ, order or direction in the nature of mandamus directing respondents 1 and 2 and the Registrar of the High Court to

hand over heir-looms referred to in Annexure 'C' and 'other articles' expeditiously to the petitioner:

(f) pass such other and further orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

This writ petition (writ petition No. 122 of 1984) was opposed by both respondents 1 and 2. in the said petition. They presented their statements

of objections by way of counter-affidavits. Thereafter, on hearing learned counsel, on both sides and considering the facts and circumstances,

including the questions of law arising in the writ petition, the learned single Judge of this High Court dispose of the writ petition on June 27, 1989

holding as follows :--

An regards properties consisting of 42 items which are mentioned in Appendix 'C' and which are mentioned (sic) declared by the Members of the

Committee, appointed by the Supreme Court as 'Heirlooms', the same are declared to be the property of the petitioner and need not be subjected

to any inquiry of the respondent No. 2.

Accordingly, the writ petition succeeds to the extent indicated above and the following reliefs are granted to the petitioner :--

i) By a writ of mandamus respondent No. 1 is directed to accept and admit the petitioner as the rightful owner of 'heirlooms' consisting of 42 items

of jewellery mentioned in Appendix 'C' of the report of the Inspection Committee appointed by the Supreme Court of India and allow the

petitioner to have the heirlooms mentioned above in his possession. The said heirlooms are hereby declared to be the personal property of the

petitioner who is entitled to retain the same.

ii) By a writ of certiorari the impugned orders passed by respondent No. 2 on the representation of the petitioner and on his review petition, where

by the petitioner had claimed the ownership of jewellery and Regalia, are quashed as being bad in law and violative of the principles of natural

justice. The impugned orders shall be treated by respondent No. 2 as non-est.

iii) By a writ of mandamus respondent No. 2 (Union of India) is directed to reconsider the representation of the petitioner after giving adequate

opportunity of being heard to all the parties involved in the matter with regard to the claim of items of jewellery mentioned in Appendix 'A' and 'B'

to the report of the members of the Inspection Committee appointed by the Supreme Court consisting of 553 and 449 items respectively. The

Union of India shall also decide about the mode and method-of the use of the said jewellery and its custody in future, in case the petitioner's claim

over the said jewellery is recognised by the Union of India.

By virtue of the directions contained in sub-paras i. ii and iii above, in sub-para iv, the learned single Judge has issued further direction to the

Registrar of this High court to release 42 items of jewellery mentioned in Appendix 'C' to the report of the Committee of Inspection appointed by

the Supreme Court in favour of the petitioner etc etc.

8. Aggrieved by the judgment and order made by the learned single Judge on June 27, 1989 in the writ petition, the above referred three Letters

Patent Appeals are presented in this High Court.

9. We have heard Shri S. S. Ray, learned senior counsel appearing for the appellant in LPA (W) No. 60 of 1989 along with his associates, named

above, Shri NA Kakroo, learned Advocate General appearing for the appellant in LPA (W) No. 39 of 1989 along with his associate Government

Advocates named above and Shri D. P. Gupta, learned counsel appearing for the Union of India (appellant) in LPA (W) No. 64 of 1989 along

with his Junior.

10. Having taken us through the grounds of appeal No. 60 of 1989 and also the other documentary evidence consisting of the Paper-books (vols.

I to 7), including the points of law for determination prepared by him, Shri S. S. Ray learned senior counsel argued The following points in support

of said LPA :--

a) The finding of learned single Judge in the writ petition holding the rejection of representation, made by Dr. Karan Singh, by the Union of India in

regard to the moveables found in 'Toshakhana' (Treasury), is justified;

b) The findings of the learned single Judge, however, at pages 60 to 83 (of the LPA No. 60 of 1989) though were in favour of the appellant Dr.

Karan Singh but the findings at pages 38, 83, 84 to 87 of the paper-book vol. 7 holding that there was abandonment by the writ petitioner of these

valuable moveables are incorrect and cannot be supported. The argument advanced in support of his claim is that these findings of the learned

single Judge are raised on the disputed facts inasmuch as autobiography, said to have been written by Dr. Karan Singh, and other material which

do not constitute any evidence in favour of the State in holding that there was abandonment. His submission is that the learned single Judge has

erred in coming to a just conclusion on this point. The learned counsel has placed strong reliance upon Section 17 of the Evidence Act, including

page 41 of Auto-biography, 1982 of Vol. 6 at page 6 para 8 to substantiate his argument that there was no admission whatsoever on the part of

the writ-petitioner (Dr. Karan Singh) that there was abandonment, nor there is enough evidence attracting the provisions of Section 115 of the

Evidence Act, including Section 31 of the said Act to hold that there was estoppel on the part of the writ petitioner (Dr. Karan Singh). We will

examine his argument on this point.

c) Another argument advanced by Mr. Ray, learned counsel for the appellant (Dr. Karan Singh) is that the reasonings of the learned single Judge

to the findings, recorded by him against the writ-petitioner (Dr. Karan Singh), in these circumstances are not supportable by the facts and

circumstances of the case.

11. After completing the arguments on first and second day, Shri S. S. Ray, learned counsel for the appellant (Dr. Karan Singh), posed a different

propositions of law in reply to the arguments advanced by the opposite side. He has submitted that the valuable moveable articles, numbering 563

contained in certain boxes, are private properties of Dr. Karan Singh (appellant) and that, therefore, he is entitled to claim the same and be

returned to him. One of the propositions of law is :

i) that by virtue of the assessment order made, under the provisions of the Wealth Tax Act, 1957 (Central Act 27 of 1957), by the Competent

authority assessing the tax in respect of these moveables, directed Dr. Karan Singh to pay the said tax. By virtue of the assessment made by the

Competent authority for The years 1978. 1979. 1980 and 1981, the court must be able to record a finding that these valuable moveables, which

Dr. Karan Singh claimed as his private properties and accordingly v. were assessed to the tax. it must be presumed that these moveables are

private properties of Dr. Karan Singh (appellant). Substantiating his argument in this behalf, the learned counsel has pointed out that out of 563

articles, some of them are regalias, though the appellant (Dr. Karan Singh) did not claim all these regalias to be returned to him, except a few which

were learned by the State of Jammu and Kashmir under certain conditions and that they are kept in a Museum. The other moveables having been

considered by the Committee constituted by the Hon'ble Supreme Court and the Experts in the Committee having considered these articles as

having come from generation to generation and that they having used as jewells by the members of The royal family occasionally out of whom

some of them (42 by the court) as heirlooms, they have been assessed to the tax under the Wealth Tax Act, 1957. Therefore, according to the

arguments advanced by the learned counsel for the appellant (Dr. Karan Singh) these articles must be declared as private properties of the

appellant (Dr. Karan Singh);

ii) Another proposition of law, argued by the learned counsel by the appellant (Dr. Karan Singh), is that since these valuable moveables (563

articles) were left in 'Toshkhana' (treasury) of the State consequent upon the accession of the State of Jammu and Kashmir to the Indian dominion,

the court must take into consideration the subsequent developments till 1983 when an attempt was made by the Government of J & K State to

dispose of these articles. Thus, these articles at The most can be treated as

involuntary bailment or gratuitous bailment and, therefore, if the law is made applicable to bailment, then the court must record finding that these articles are entitled to be returned to the bailor after the object of bailment is fulfilled.

iii) Lastly, the learned counsel for the appellant (Dr. Karan Singh) submitted that even the law relating to prescription is to be applied, then the court will have to record a finding in favour of the appellant (Dr. Karan Singh) with respect to these moveables. Thus, he has sought for relief in favour of the appellant (Dr. Karan Singh).

12. Per contra, these arguments were opposed by Shri D. P. Gupta. learned counsel appearing for Union of India and Shri N. A. Kakroo. learned Advocate General appearing for the State of Jammu & Kashmir.

Shri D. P. Gupta. mainly argued that regard being had to the conduct of Dr. Karan Singh and the correspondence between the Union of India and

Dr. Karan Singh the court must presume that by virtue of the action of the State, in exercise of the sovereign powers and in view of the cabinet

decision taken by the State of Jammu & Kashmir these valuable moveables have been treated as those belonging to The State of J & K. A

presumption will have to be drawn against Dr. Karan Singh by virtue of his conduct being silent for about thirty years.

13. In so far as the arguments of learned Advocate General appearing for the State of Jammu & Kashmir, are concerned, he submitted that (a)

apart from the mode of devolution of sovereign powers, the principle of accession if properly understood, the right in respect of these moveable

articles belong to the erstwhile Maharaja Hari Singh came to an end the moment the accession is complete:

b) Though an opportunity was given to the erstwhile Maharaja asking him to submit a list of properties claiming as his personal properties, in the list

of properties submitted by him, he did not claim these moveables as his private properties. Thus, there is a clear estoppel against Dr. Karan Singh

(appellant) and in favour of the State of Jammu & Kashmir.

c) Lastly, he submitted that by virtue of the Cabinet decision, some of the items of moveables were given to Dr. Karan Singh (writ petitioner) by

way of loan by the State Government, the presumption, therefore, is in favour of the State Government and not in favour of Dr. Karan Singh

(appellant).

d) Both, Shri DP Gupta and learned Advocate General argued that the last proposition of law advanced by Shri S. S. Ray, learned counsel for the appellant (Dr. Karan Singh), putting forward the principles of gratuitous bailment is concerned this gives rise for a new ground and argument which is not either pleaded in the writ petition or argued. Therefore, they submit that the court shall not consider (his argument while disposing of these three appeals.

14. In view of the arguments advanced by both the parties, the following questions arise for our consideration :--

i) Whether the appellant (Dr. Karan Singh) has established a clear right in respect of 563 articles (valuable moveables) found in 'Toshkhana' of the Jammu & Kashmir State as his private properties ?

ii) Whether the Union of India and the State Government of Jammu and Kashmir were able to establish that there is abandonment of rights, if any, in respect of these moveables by the original owner or whether the original owners have been estopped from claiming their rights, if any, by virtue of their conduct '?

iii) Whether the writ petitioner (Dr. Karan Singh) is able to establish that by bringing these 563 articles under assessment of Wealth Tax Act of 1957 is fructified resulting in a finding in his favour?

iv) Whether the law relating to bailment could be applied in respect of these valuable moveables to record a finding in these three appeals ?

15. We will take up the last question first for consideration to begin with.

For purposes of convenience and easy reference during the course of this order, we refer to the Parties in the above three appeals as follows :--

Dr. Karan Singh, appellant in LPA No: 60 of 1989, as Petitioner; the Union of India is appellant in LP(W) No. 64 of 1989 as the Union of India:

and the State of Jammu and Kashmir appellant in LPA (W) No. 39 of 1989 as the State of Jammu and Kashmir.

Question No. iv: Whether the Law relating to bailment could be applied in respect of these valuable moveables to record a finding in these three appeals ?

Considering question No. iv referred to above relating to a case of bailment

sought to be made out by the learned counsel for the petitioner in respect of the subject matter in the writ petition, namely, 563 articles said to have been left in the Toshakhana' (Treasury of the State) as on the date when the Union of India acting upon the instrument of Accession have passed appropriate orders in that behalf. It is necessary to mention here that the petitioner (Dr. Karan Singh) has failed to take a specific averment in his writ petition as to the Law of Bailment nor has he laid a foundation in the writ petition so as to enable the writ court to record finding on this question. Indeed, as we have mentioned earlier, after completing the arguments of both the parties in this (appellate) court when Shri S. S. Ray, senior counsel for the petitioner, was called upon to furnish his replies he has taken this particular argument with a view to canvass the point of bailment. As a matter of fact, the learned counsel appearing for the respondents (Union of India and the State of J & K) have taken preliminary objections to this argument of the learned counsel for the petitioner. They have pointed out that for the first time in the appeal and that too at the time of furnishing replies this question of bailment has been raised which cannot be considered in the appeal in the absence of proper hearing in the writ petition.

16. With a view to appreciate this argument and preliminary objection, we have carefully gone through the averments made in the writ petition, statement of objections by way of counter-affidavit and other pleadings in the writ petition and have discovered that there is no such a plea taken by the petitioner in his writ petition (writ petition No: 122 of 1984) to enable the learned single Judge to consider this aspect of the matter and to record appropriate finding. Thus, therefore, we will have to see whether it would be feasible for this court (D. B.) to appreciate the arguments advanced on the question of bailment at this stage.

In Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, , the Supreme Court had the occasion to deal with such a question. While referring the provisions of Order 6, Rule 2 of the CPC and the variance in the pleadings sought to be argued, the Supreme Court held, as follows :-

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Where the defendant in his written statement sets up title to the disputed lands as the nearest reversioner, the court cannot, on failure of the

defendant to prove his case make out a new case for him which is not only not made in the written statement, but which is wholly inconsistent with

the title set up by the defendant, namely, that the defendant was holding under a shikmi settlement from the nearest reversioner.

(Please see para 5 of the judgment).

In *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, the Supreme Court again had the occasion to deal with a similar question. In para 33 of

the said decision, the Hon'ble Supreme Court has held as follows :-

It would not be right to permit the petitioner to raise question, which depends on facts which were not mentioned in the petition but were put

forward in a rejoinder to which the respondents had no opportunity to reply.

This is exactly the question raised in the preliminary objections by the respondents stating that in the absence of the pleadings and without an

opportunity having been afforded to them to controvert this aspect of the matter in the written-statement or counter-affidavit, the petitioner cannot

raise this question for the first time in the appeal.

In *Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company*, while dealing with Order 41, Rule I of the CPC referring to an appeal,

the Hon'ble Supreme Court in para 8 of the decision has held as follows :--

Party cannot change its case at appellate stage, Plea of licence or its irrevocability not raised in trial court nor adjudicated upon. It cannot be

raised for first time in appeal.

Similarly, in *M. Ramasamy Pillai (dead) by LRs. Vs. The Hazarath Syed Shah Mian Sakkaf Khadiri Thaikal*, , dealing with the averments made in

the plaint, the defence taken by the defendant and attempt to make out a case beyond the pleadings, the Supreme Court held as follows at page

2297 :--

.....A perusal of the plaint dated 15-9- 1967 clearly shows that the plaintiff had come forward with a clear case that the defendant was a

tenant holding over and the High Court was not right to make out a new case beyond the pleadings.....

In *Banarsi Das Vs. Seth Kanshi Ram and Others*, , which is a leading case on this point, a Constitutional Bench of the Hon'ble Supreme Court had

an occasion to deal with this question. In para 15 considering the scope of

Section 100 read with Order 41 Rule 25 of the CPC (1908) in relation of Section 3 of the Limitation Act referring to the plea taken in the plaint, the Hon'ble Supreme Court held, as follows at page 1170 :--

.....a new plea of limitation which was not purely one of law but a mixed question of law and facts should not have been allowed to be raised

for the first time at the stage of arguments in second appeal by the High Court especially when it was raised by the non-contesting defendant who

had not filed a written statement in the suit. If the High Court felt overwhelmed by the provisions of Section 3 of the Limitation Act, it would at least

have given an opportunity to the parties which supported the decree of the trial court to meet the plea of limitation by amending their pleadings.

After following the pleadings to be amended, the High Court should have framed an issue and remitted it for a finding to the trial court under Order

41, Rule 25 of the Code of Civil Procedure.

In view of the authorities referred to above on the question of new plea having been taken in the appeal for the first time and that too without

seeking to amend the writ petition, we are clearly of the view that it would not be proper for the appellate court to allow such a new plea to be

taken by the petitioner in order to make out a new case. As stated earlier, the respondents-Union of India and the State of J & K had no occasion

to controvert this plea in the writ petition and there was no finding recorded by the learned single Judge in this regard. Thus, for these reasons we

dis-allow this plea (question No. iv) of bailment raised by the learned counsel for the petitioner. Therefore, we are not inclined to go into question

No. iv in these appeals.

17. Regarding being had to the claim involved, the petitioner claiming these articles as his private properties, it would be more convenient for this

court to quote questions (i) and (iii) together for purposes of consideration.

Questions (j.) and (iii):

i) Whether the appellant (Dr. Karan Singh) has established a clear right in respect of 563 articles (valuable moveables) found in 'Toshakhana'

(Treasury) of the State as his private properties?

iii) Whether the petitioner (Dr. Karan Singh) is able to establish that by bringing 56.1 articles under assessment of Wealth Tax, 1957, is fructified

resulting in a finding in his favour?

The aforesaid questions deal with the claim of the petitioner that he has a right in respect of 563 articles (valuable moveable found in 'Toshakhana'

(Treasury) of the State and that they are his private properties and that the petitioner has been able to establish that by bringing the said articles

under assessment of Wealth Tax Act. 1957, is fructified, resulting in a finding in his favour.

It is not in dispute that certain valuable moveables were left in the 'Toshakhana' of the State by the former Maharaja (Hari Singh) when the Union

of India considering the instrument of Accession, passed certain orders by virtue of which the territory of J & K State came to be included with the

dominion of Indian Government. But it is relevant to mention here that the State of Jammu and Kashmir having been acceded to India on Oct. 26,

1947 acting upon the instrument of Accession executed by the Ex-Ruler (Maharaja Hari Singh), it was pointed out that legally and constitutionally,

therefore, the position of this State (Jammu and Kashmir) is the same as that of other acceding States. It is indeed true and not disputed that

pursuant to a D. O. Letter written by the then Union Home Minister, Shri V. B. Patel calling upon the former Maharaja (Hari Singh) to furnish a list

of properties claiming to be the private properties of the Maharaja, the then Maharaja wrote a letter furnishing a list of properties claiming to be his

private properties. The schedule appended to the said letter contains three lists, namely, List-A. List-B and List-C. The original Appendix to the

letter including the schedule containing List-A. List-B and List-C are found at pages 34 to page 40 in the paper- book prepared in the appeal, as

Volume-2. There are number of items of properties contained in List-A regarding certain buildings in the State of Jammu and Kashmir. As per

List-B. certain Immovable properties situated at Jammu and Kashmir were sought to be transferred to the Government. In the List-C, certain

Immovable property namely, buildings situated in Jammu & Kashmir were required to be released from the State' Departments in favour of

erstwhile Maharaja.

Indeed it is further seen, that in Annexure-I. dealing with the private Department buildings and lands situated at Jammu and Srinagar. Enclosure-11,

the privileges and amenities enjoyed by his Highness the Maharaja and the

members of the Ruling Family, including the concession given in respect of Custom Duty, Income Tax. Land Revenue. Road Toll, Telegrams, Motor Vehicles, Private Department Employees etc. etc. have been furnished. (Please see from page 57 to page 60 of the Paper-book, Volume-5.

18. Shri Vishnu Sahay, representing the Ministry of Slate, Union of India, wrote a letter on June 18, 1949 to the erstwhile Maharaja, which reads as follows :--

I am writing this letter with reference to our discussions regarding Slate Department properties. It is agreed that the properties mentioned in List 'A' of the list which you gave to Shankar would be recognised as Slate Department properties. If the Jammu and Kashmir Ministry wish to utilise any of these properties for some important public purposes, it will be open to them to make a representation to the Ruler.

2. It is agreed that the properties mentioned in List 'B' might be transferred to the State Department.

3. As regards List 'C', it is agreed that these properties may continue to be used by your Highness and maintained from your Highness' Civil list allowances.

Thus, it is seen by the perusal of the said letter that the Union of India acting upon the letter of Maharaja referring to the properties in list 'A'

claiming to be his private properties, the same having been recognised as such, the Union of India permitted these properties to be enjoyed as his

private properties by the Maharaja. So long as list 'C' is concerned, the Union of India agreed that these properties may be continued to be used

by His Highness Maharaja and be maintained by His Highness from his civil list allowances. Thus, whatever, the properties are shown in Lists A, B

and C, as mentioned in the letter of Maharaja, the Union of India agreed to accept the Maharaja to use these properties as his private properties,

Therefore, it is pertinent to mention here that none of these lists. A, B and C mention articles 563, sought to be claimed by the Maharaja as his private properties.

The legal presumption that can be drawn by the court is that either the former Maharaja never knew all these moveable valuables are kept in the

'Toshakhana' of the State as on the date of transaction or he had simply ignored to claim the same as his private properties.

Besides this, there are some more important aspects of the matter which this court will have to consider for answering the questions. One of the arguments, advanced on behalf of the petitioner, is that by virtue of the law that came into existence subsequently and Dr. Karan Singh, after the death of his father (Maharaja Hari Singh), made an attempt to bring some of his properties to tax under the Wealth Tax Act, 1957 (Act No 27 of 1957). The argument is that since there was an order made by the Competent authority for certain years bringing some of the properties including certain moveables to be assessed to tax under the said Act, the court must recognise his claim that these are his private properties.

19. We will now examine this important aspect of the matter. To demonstrate and to make out a case before the court of law, certain documentary

evidence has been produced such as the assessment orders for the years 1978, 1979 and 1981.

20. At this stage, in order to enable us to consider the question, it is pertinent to refer certain provisions of the Wealth Tax Act, 1957, hereinafter

called as the Act of 1957. Section I of the said Act says that it extends to the whole of India. Sub-section (3) of Section I of the said Act says that it

shall be deemed to have come into force on the 1st day of April, 1957. Clause (e) of Sub-section (2) (sic) of Section 2 of the Act (definitions

clause), lays down, as follows :--

(e) "assets" includes property of every description, moveable or immovable. but does not include.-

(1) in relation to the assessment year commencing on the 1st day of April, 1969 or any earlier assessment year." (sic)

It may be relevant to mention here that the Act of 1957 has undergone certain amendments in the year 1969, Clause (f) defines the word "Board

meaning thereby the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963). Clause (p) defines

the word "Ruler" meaning thereby a Ruler as defined in clause (22) of Article 366 of the Constitution. Clause (xiv) under Explanation I u/s 5 of the

said Act lays down, as follows :--

(xiv) jewellery in the possession of any Ruler, not being his personal property, which has been recognized before the commencement of this Act,

by the Central Government as his heirloom or, where no such recognition exists,

which the Board may, subject to any rules that may be made by the Central Government in this behalf recognise as his heirloom at the time of his first assessment to wealth-tax under this Act.

The proviso incorporated by virtue of amendment in 1972 to this clause provides, as follows :--

Provided that in the case of jewellery recognised by the Central Government as aforesaid, such recognition shall be subject to the following

conditions namely;

(i) that the jewellery shall be permanently kept in India and shall not be removed outside India except for a purpose and period approved by the

Board

Sub-clause (ii) of Clause (xiv) lays down, as follows :--

(ii) that reasonable steps shall be taken for keeping the jewellery substantially in its original shape:

Sub-clause (iii) of clause (xiv) lays down, as follows :--

(iii) that reasonable facilities shall be allowed to any officer of Government authorized by the Board in this behalf to examine the jewellery as and

when necessary;

Sub-clause (iv) of the said clause lays down, as follows :--

(iv) that if any of the conditions hereinbefore specified is not being duly fulfilled the Board may, for reasons to be recorded in writing withdraw the

recognition retrospectively with effect from the date of commencement of Clause (b) of Section 5 of the Rulers of Indian States (Abolition of

Privileges) Act, 1972, and in such a case. wealth tax shall become payable by the Ruler for all the assessment years after such commencement for

which the jewellery was exempted on account of the recognition.

In this context, it is necessary for us to refer to the 26th Amendment Act. 1971 to the Constitution of India, hereinafter referred to as Amendment

Act. 1971. By virtue of Article 363A inserted by the said amendment, recognition granted to Rulers of Indian States to cease and privy purses'to

be abolished.

Thus, by virtue of the said Amendment Act. the privy purses that were granted to the former Rulers of the States in India came to be abolished.

Secondly, by virtue of incorporating clause (22) to Art. 366. which lays down as

follows :--

(22) "Ruler" means the Prince, Chief or other person who at any time before the commencement of the constitution (Twenty-sixth Amendment)

Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who at any time before such commencement was

recognised by the President as the successor of such Ruler.

It is an admitted fact that by virtue of the resolution having been passed by the Stale Assembly, Dr. Karan Singh, the son of former Ruler (Shri

Maharaja Hari Singh) was recognised as a Ruler of the State of Jammu & Kashmir for a short period. However, by virtue of this amendment

incorporating Clause (22) to Article 366, the petitioner lost that recognition being the Ruler as such of the State of Jammu & Kashmir.

21. It is again pertinent to mention here that the petitioner (Dr. Karan Singh) has challenged the provisions of Wealth Tax Act, 1957 contending

that the same is not made applicable to State of Jammu & Kashmir. Petitions 695 and 694 of 1982, read with 207 and 206 of 1981 having been

heard and disposed of by an order by this High Court on November 14, 1994 and 19-8-1993, the High Court of J & K held in favour of the writ

petitioner holding that the provisions of Wealth Tax Act 27 of 1957 were not applicable to the State of Jammu & Kashmir. The Commissioner of

Wealth Tax presented a Civil Appeals No 1290-93 of 1985 before the Hon'ble Supreme Court and the constitutional bench of five Judges of

Hon'ble Supreme Court by an order made on Feb. 4, 1993, allowed the Civil appeals in reversal of the order made by this High Court in writ

petitions and held as follows :--

By the Constitution (Application to Jammu and Kashmir) Order, 1954 made under Article 370(1), the provisions of the Constitution of India

were applied to the State of Jammu & Kashmir with several exceptions and modifications. Parliament was vested with the power to make laws

only with respect to the matters enumerated in Entries I to 96 of List I. The residuary power was retained by the State.

Therefore, the Wealth Tax, as originally enacted, was covered by entry 86 of list I of 7th Schedule of the Constitution and its extension to the State

of Jammu & Kashmir was perfectly constitutional.

The contention that valuable moveables (563) belonged to the HUF of Petitioner

and therefore, an attempt was made to bring some of these articles to tax under the Wealth Tax Act, 1957 by which the petitioner wanted to show his bona fides that these moveables are his private properties, it is necessary to mention here the Hon'ble Supreme Court while dealing with the very case of the Commissioner of Wealth Tax Vs. Dr Karan Singh and Others, has held as follows :--

We are, therefore, of the opinion that the Wealth tax Act (as originally enacted and extended to J & K) is a 'net wealth tax Act', imposed upon the individuals, group of individuals like HUF and Companies. The tax is not upon the assets as such but is upon the individual and companies with reference to the capital value of the assets, held by them.....

Thus, this ruling abundantly makes it clear that the petitioner never brought all these valuables under the assessment with a view to take into consideration the capital value of the assets held by him. On the other hand, an attempt has been made only to bring some of the properties to be assessed for three years, which does not help him in any way.

It is in this context that an attempt was made to show before this court that, with a view to avail of the exemption clause provided u/s 5 of the Wealth Tax Act, the petitioner obtained assessment orders in respect of his certain properties. It is further necessary to note here that when an attempt was made by the State of Jammu & Kashmir seeking to dispose of these valuable moveables in public auction of sale, for the first time, the petitioner in 1983 approached this High Court with a writ petition challenging that action of the State Government. In writ petition No. 122 of 1984, the permission sought for by the writ petitioner seeking to inspect these articles found in 'Toshakhana' of the State having been declined by an order made by the learned Single Judge of this High Court on July 20, 1984, the prayer of the writ petitioner was rejected. Thereafter, the matter went to Hon'ble Supreme Court in Civil Appeal, arising out of SLP (Civil) No, 9465 of 1985 and the Hon'ble Supreme Court by an order made on Dec. 20, 1985, issued the following direction in the same :--

.....We, therefore, direct that the six boxes containing jewellery and other valuable articles lying in Srinagar Toshkhana under the lock and seal of the Commissioner of the High Court shall be opened for the purpose of inspection by the Member, Central Board of Direct Taxes (WT & J)

who will be accompanied by the Director General of Archaeological Survey of India, Director Antiques, Director National Museum and approved

members of jewellery for determining the true nature and character of same and whether any and if so what items constitute heirlooms of articles of

personal use of the appellant and his family inspection will be taken in the presence of the appellant's representative as representative of the State

Government such representative on the panel of the Committee but render assistance to the members of the Committee. The inspection Committee

will complete the inspection and submits its report to the High Court within three months from the commencement thereof. The parties are directed

to obtain further sanction in the matter of such inspection from the High Court.

It is stated by the learned Senior counsel for the petitioner that thereafter in presence of these members six boxes found in the 'Toshakhana' of the

State were opened at Srinagar and the valuers after having examined and valuing the articles, submitted a report. The report of the Inspection

Committee appointed by the Hon'ble Supreme Court regarding inspection of jewellery and other valuable articles found in 'Toshakhana' of the

State under the lock and seal of the High Court of Jammu and Kashmir, is produced as Annexure from pages 138 to 267, in Volume-6 of the

Paper-book. At page 156 of the said Paper-book in the report, the Inspection Committee has observed as follows :--

.....Following is the categorical bifurcation to the best of our knowledge and belief considering the History of Jammu and Kashmir State.

Creations of Ex-Ruling Family and actual physical inspection of jewellery. But still we may add that this is on assumptions as the subject matter is

of further documentary evidence and facts.....

In the said statement, the Committee has made four categories such as A, B, C and D of these articles.

22. In the writ petition. a specific defence taken by the Union of India in the counter-affidavit, is as follows :--

As regards para 9 of the Petition, it is stated that according to the Press release issued on 20th Oct. 1983 by the J & K Government, a copy of

which had been sent to the Central Government, the items of jewellery, precious stones, wearing apparel etc. were deposited in the State Treasury

in 1951 and that these items of jeweller, etc. are the property of the State.

Similarly, on the same line of defence, the State of J & K also presented counter-affidavit, taking the following stand by way of defence :--

As already mentioned in preceding paragraph, all the items in list of private property as submitted by Maharaja Had Singh was recognised as his

private property by the Government of India. He had not included the items of jewellery, regalias as his private property in the said list....

It is further added as to the feasibility of issuing a writ under Article 226 of the Constitution of India, that the articles which are subject matter in

the writ petition and its nature so as to confer or extinguish ownership rights of the petitioner over the said articles cannot be determined by the

Hon'ble court in its writ jurisdiction. The right asserted by the petitioner over the said property can be determined in a civil suit and not in a writ

court by way of a writ petition. The another defence taken by the State is that the property in question was acquired out of the State funds. (Please

see pages 22 and 23 in the paperback Vol. 5). There is no mention about the jewellery considered in the inventory of the Ex-ruler of Jammu &

Kashmir Slate, as approved by the Government of India.

23. Referring to the provisions of 26th Amendment (Constitutional Amendment) Act, 1971. a specific stand is taken on behalf of the State of

Jammu & Kashmir, which reads, as follows :--

.....That being so, the properties which had vested in the Rulers in accordance with those settlements will continue to remain with them. As

regards items of regalia which were declared as State Properties but were allowed to be retained by the Rulers, for use on ceremonial occasions

subject to inspection by the authorities concerned, the position that resulted was that after the commencement of the Constitution (Twenty sixth

Amendment) Act. 1971, official recognition of Rulership was withdrawn and there was no longer any need for display of these regalia, which are

State properties but are with the former Rulers.

Thus, the specific defence taken by both, the Union of India and the State of Jammu & Kashmir. goes to show that these items of articles (563)

found in the 'Toshakhana' (Treasury of the State) cannot be said to be the private property of the Petitioner and, therefore, his claim will have to be

rejected.

24. The learned Single Judge in the course of his judgment, the subject matter of

these three appeals, has recorded finding that out of these 563

articles, 42 articles are heirlooms. At page 95 of the paper-book, volume 7 (judgment), the learned single Judge has observed, as follows:--

It is contended by the respondent No. 1 that six boxes containing the valuables in question. stored in the 'Toshkhana' belong to the State. At the

same time it was conceded that Toshkhana was under the control of the Maharaja when he was a Ruler and Maharaja did not make any difference

between his private property and State property. That being so, it sounds slightly true that Maharaja must have used Toshkhana as a strong room

for storing his family jewellery which admittedly belongs to his family. State does not claim ownership of the articles of jewellery. They relied on

principle of estoppel and waiver of right by the petitioner and his father.

Further, referring to the finding of the Inspection Committee and to the appendix of lists A, B and C along with the report submitted by the said

Committee, the learned Single Judge has observed, as follows;--

After the abolition of the institution of the Rulers, the law of primogeniture would not apply to the Maharaja's family or to the petitioner. The

petitioner is a Hindu by faith. Therefore, he will be governed by Hindu Law. After he ceased to be the Ruler of the State, he may have lost right to

Privy Purse dignities and privileges. Nonetheless he came to be ruled by Hindu law which would govern the petitioner's family in the matters of

inheritance. Respondent No. 1 has shown lack of knowledge about the petitioner being 'Karta' of a Hindu family. Even under Hindu law, the

petitioner is entitled to inherit that was left by his ancestors as personal property which in the present case is in the shape of moveables such as

jewellery and Regalia. The family jewellery which was owned by the ancestors of the petitioner cannot be claimed by respondent No.1 without

adducing any proof regarding their title.

Thus, at page 101 of paper-book (Vol. 7), in his judgment, the learned Single Judge has further observed, as follows :--

As regards properties consisting of 42 items which are mentioned in Appendix 'C' and which are declared by the Members of the Committee,

appointed by the Supreme Court as ""Heirloom"", the same are declared to be the property of the petitioner and need not be subjected to any

inquiry of the respondent No. 2.

Accordingly, the writ petition succeeds to the extent indicated above and, the following reliefs are granted to the petitioner :--

i) By a writ of mandamus respondent No. I is directed to accept and admit the petitioner as the rightful owner of 'heirlooms' consisting of 42 'items

of jewellery mentioned in Appendix 'C' of the report of the Inspection Committee appointed by the Supreme Court of India and allow the

petitioner to have the heirlooms mentioned above in his possession. The said heirlooms are hereby declared to be the personal property of the

petitioner who is entitled to retain the same.

ii) to v).....

It is this finding of the learned Single Judge which is called in question by the Union of India and the State of Jammu and Kashmir by way of L.P.

A.(W) No. 64 of 1989 and L.P,A.(W) No. 39 of 1989 on the grounds taken therein.

25. The first limb of the arguments advanced by the learned Senior Counsel for the petitioner is that by virtue of the action taken by the writ

petitioner by obtaining orders of assessment assessing the value of some of the properties to tax under the Wealth Tax Act, 1957 and having got

orders of assessment for the years 1978, 1979 and 1981, the court must take into consideration that the bona fides of the petitioner are :

i) to show that he is owner of these properties and liable to pay tax;

ii) the authorities under the Act having assessed some of these properties to tax under the said Act, issued order directing the petitioner to pay tax,

though he did not pay the same; and

iii) that these bona fides are on the part of the petitioner to disclose that he continues to exercise his right over the aforesaid properties claiming his

right as such.

26. The other limb of the arguments advanced by the learned counsel is that merely because the petitioner did not openly claim ownership over

these articles immediately when he ceased to be a Ruler by virtue of law, the court cannot presume that he ceased to be the owner of these

properties,

27. The last argument advanced by the learned counsel in this regard is that though Maharaja Hari Singh Ex-Ruler and his son failed to claim these

valuable moveables as his property, the court must consider his (petitioner's)

ownership over the said property. Indeed, the submission of Shri S.

S. Ray, learned Senior Counsel for the petitioner, is that though the learned Single Judge of this High Court has partly accepted his arguments and

recognised the ownership of the petitioner over 42 items of moveables, the writ petition of the petitioner was partly allowed, which is again

incorrect and illegal, according to him.

28. The following three tests can be applied to understand the bona fides of the petitioner in this regard:-- Firstly, referring to the provisions of

Wealth Tax Act, 1957 which was made applicable to whole of India without any exception to the State of Jammu and Kashmir, when that is so,

the writ petitioner should have got these properties assessed to the tax under the said Wealth Tax Act. On the other hand, he questioned the

validity of the said Act in his writ petition. Though he succeeded in the writ petition, but ultimately the Hon'ble Supreme Court held reversely.

Therefore, we will have to see whether he has taken prompt action to bring these properties to be taxed under the said Act? Except for three

years, namely, 1978. 1979 and 1981, he has not got these properties assessed to any tax, though the Hon'ble Supreme Court declared the law

allowing the SLP of Union of India by an order made on Feb. 4, 1993.

(ii) Secondly, it is an admitted fact that though an assessment was made for the three years, referred to above, and assessment orders had been

issued for payment of tax, but the writ petitioner did not choose to pay the tax; and

(iii) Thirdly, it is seen by perusal of the copies of assessment orders that in these three years assessment orders, these Articles (563) have not been

accounted for, for purpose of taxation. Therefore, it is not possible to concede to the submissions made by the learned Senior counsel for the

petitioner that the bona fides on the part of the petitioner are positive, to be accepted by the court of law.

29. The second test that we can apply is that apart from these valuable moveables (563) articles found in the Toshkhana of the State Government,

there are number of properties including other properties which are liable to be taxed under the Wealth Tax Act, 1957, which the petitioner did not

do. Anyhow that is not the concern of this court for purposes of recording finding on these questions. But considering the bona fides of the

petitioner at no point of time either the erstwhile Maharaja of the State after the Accession of the State of J & K to the dominion of India or his son

(Dr. Karan Singh, petitioner) after having ceased to be recognised as Ruler of the J & K State, did take any action openly to establish ownership

rights over the said articles.

30. Indeed, there is one more aspect of the matter which we will have to take into consideration Shri S. S. Ray. learned Senior Counsel for the

petitioner has vehemently addressed argument stating that by virtue of the direction given by the Hon'ble Supreme Court on Dec. 20, 1985 while

disposing of Civil Appeal No. 5720 of 1985 issuing a direction which we have extracted above, the Inspection Committee having submitted the

report had formed an opinion which was taken into consideration by the learned Single Judge while disposing of writ petition No. 122 of 1984 on

June 27, 1989. The submission is that the learned Single Judge was right in accepting the opinion formed by the Inspection Committee and

recording finding that 42 articles, constituted so-called heirlooms of the Royal Family entitling the petitioner to have the same in his possession. But

we are not very much convinced about this submission of the learned counsel for the petitioner, because the direction contained in the course of

order made by the Hon'ble Supreme Court in Civil Appeal No. 5720 of 1985 is only a direction to the Committee constituted by the Hon'ble

Supreme Court for purposes of inspection and to submit a report on the lines indicated in the order. But that does not mean whatever opinion

formed by the Expert Committee is binding on the court.

We are further of the view that the learned Single Judge could not have been swayed by the tentative opinion formed by the Committee in regard

to these 42 items sought to have been heirlooms of the Royal Family. It is for that court to have independently applied its mind apart from the

opinion formed by the Expert Committee to record appropriate finding in this behalf. The reasons furnished by the learned Single Judge are not

very much convincing. However, we will presently deal with these circumstances and reasons given by the learned Single Judge.

Considering the provisions of clause (xiv) under Explanation-1 of Section 5 of the Wealth Tax Act, 1957, extracted above, the court will have to

see whether the jewellery in possession of any Ex-Ruler found to be his personal

property which has been recognised as such before the commencement of the Wealth Tax Act, 1957, it is for the Central Government to decide whether any of these articles are heirlooms or where such recognition exists, the Board, as defined under the said Act, will have to examine and record finding for purposes of assessment of tax under the said Act of 1957.

Further, as we have already observed, the word ""Board"" has been defined in the said Act under Clause (f). extracted above. To repeat the word

'Board' means the Central Board of direct taxes constituted under the Central Boards Revenue Act, 1963. Therefore, unless such a Board is

constituted and the competent authority asking that Board to go into this question and to make proper assessment, it cannot be said that merely

there is a direction given by the Hon'ble Supreme court to the Committee constituted by it and that the report submitted by that Committee has got

statutory value for being followed by the court. In other words, the Experts Committee constituted by the Hon'ble Supreme Court being different

from the one defined under Clause (f) of Section 2 of the Wealth Tax Act, its opinion is not binding on the Court. This aspect of the matter lost

sight of by the learned Single Judge of this High Court, while disposing of the writ petition.

31. This apart, there are certain laws declared by the Hon'ble Supreme Court which can conveniently be applied to the facts and circumstances of

the present case. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , a

question arose, as to whether regard being had to the provisions of Article 362 of the Constitution of India with regard to acceptance and

recognition of personal rights, privileges and dignities but guarantee under the article relates to original covenants and agreements, which came up

for consideration before the Hon'ble Supreme Court. Referring to the scope and object of Article 362 of the Constitution of India, the

constitutional bench of nine Judges held as follows :--

The structure of Article 362 is somewhat different from Article 291. That Article imposes restrictions upon the exercise of legislative and executive

functions. Recognition of the personal rights and privileges of the Rulers arising out of the covenants is not explicit, but the injunction that in the

exercise of legislative and executive power due regard shall be had to the guarantees, clearly implies acceptance and recognition of the personal rights, privileges and dignities.

The Constitution thereby affirms the binding force of the guarantees and assurances under the covenants, of personal rights, privileges and dignities,

but unlike the guarantee of payment of the privy purse in Article 291, the guarantee under Article 362 is of the obligations under the original

covenants and agreements executed by the Rulers, barring those regarding which there is express legislation enacted to give effect to certain

personal rights and privileges, e.g. Wealth Tax Act, 1957, Gift Tax Act, 1958, notifications under the Sea Customs Act, 1878, Code of Civil

Procedure, 1908 and Code of Criminal Procedure, 1898." (Please see para 127 of the judgment).

The discretion and the reasons found in the course of judgment in that paragraph clearly go to show that unless and until there is a clear covenant

between the two parties, on the one hand the claim of the Ex-Ruler and on the other the acceptance and obligations arising out of the covenants

(Union of India). In the instant case, the learned counsel has not been able to point out that when there was correspondence between the two

parties and acceptance of the list of private properties furnished by the Ex-Maharaja binding the Union of India and acting upon the same,

constitute a covenant. If in the lists so furnished by the Maharaja, these Articles (563) are not found then there is no covenant between the two

parties. Thus, the Union of India has rightly taken the view that these properties cannot be said to be the private properties of the Petitioner.

Therefore, there is no question of taking a sympathetic and liberal view by the court of law, when it is a question of application of law. In this

context, if we will apply the correct law in regard to these moveables it is for the petitioner to establish that he claimed ownership and it was

accepted by the Union of India, giving reasons in writing to the petitioner.

32. Shri S. S. Ray, learned Senior counsel for the petitioner submits that in the instant case by virtue of the Accession the territory of Jammu &

Kashmir State came within the dominion of India, but this is different from a merger. His legal argument is that when a number of other States came

to be merged with the Union of India that concept is different from the concept

of Accession. Indeed, he has also produced a copy of White-paper, prepared by the Government of India and submitted that the White-paper is applicable to the facts and circumstances of the present case.

The concept of the Union of India acting upon the instrument of Accession is different from the one arising out of merger. But the learned counsel

has not been able to give any authority on this point. However, we are of the view that regard being had to the nature of territory of the J & K

Slate which came to be included within the dominion of India, the consequential result does not make any difference between the concept of

Accession and that of merger. If that is so, the Hon'ble Supreme Court had an occasion to deal with such a question in Jagannath Agarwala Vs.

State of Orissa, . Considering the scope of administration of State of Mayurbhanj's order (1949), Clause 9(g), referring to the merger of former

State into Indian Union and there being a claim against the former State, the said claim having been rejected by the Union of India when the matter

came up before the Supreme Court, it lays down the following law :--

It is clear from the Order that the claims against the former State of Mayurbhanj were being asked to be entertained only for investigation and not

for acceptance. It is the acceptance of the claim which would have bound the new Sovereign State and the act of State would then have come to

an end. But short of an acceptance, either express or implied, the time for the exercise of the sovereign right to reject a claim was still open. The

claims officer was not a part of the municipal courts, and Government cannot be said to have submitted itself to the jurisdiction of the municipal

courts, when it entrusted the enquiry to him. Nor can the investigation of claims be said to have conferred a civil right upon the claimants to enforce

their claims against the State. In short, till there was an acceptance by the Government or some Officer of the Government, who could be said to

bind the Government, the act of State was still open, and it was so exercised by the Union when it rejected the claim." (Please see para 9 of the

judgment).

Thus, therefore, in the light of consideration and the law laid down by the Hon'ble Supreme Court arising out of the said claim in the abovesaid

decided case, it is seen that so long as there is no such claim by the erstwhile Maharaja Hari Singh claiming his right over these articles and as long

as there is no specific order of the Union of India against such a claim, we do not think any right would accrue to the erstwhile Maharaja in regard to these moveables.

33. Apart from the concept of Accession or merger, there is a third concept of the territory coming within the dominion of India and that is by way

of accession of territory by a conquest. In such a case, suppose if a claim were to arise seeking to establish rights accruing under the old laws,

whether it is possible to recognise such rights, was the question arisen before the Hon'ble Supreme Court in Vinodkumar Shantilal Gosalia Vs.

Gangadhar Narsingdas Agarwal and Others, . Referring to the provisions of S. 4(2) of Goa, Daman and Diu (Laws) Regulation (12 of 1962) and

referring to the scope of Regulation 12 and Article 13 of the Constitution of India, their Lordships of the Supreme Court held, as follows (at page

1954)':--

In case of acquisition of a territory by conquest, rights which had accrued under the Old laws do not survive and cannot be enforced against the

new Government unless it chooses to recognise those rights. In order to recognise the old rights, it is not necessary for the new Government to

continue the old laws under which those rights had accrued because, old rights can be recognised without continuing the old laws as, for example,

by contract or executive action. On the one hand, old rights can be recognised by the new Government without continuing the old laws; on the

other, the mere continuance of old laws does not imply the recognition of old rights which had accrued under those laws. Something more than the

continuance of old laws is necessary in order to support the claim that old rights have been recognised by the new Government. That 'something

more' can be found in a statutory provision whereby rights which had already accrued under the old laws are saved. In so far as the continuance of

old laws is concerned, as a general rule, they continue in operation after the conquest, which means that the new Government is at liberty not to

adopt them at all or to adopt them without a break in their continuity or else to adopt them from a date subsequent to the date of conquest.

The consideration and the reasoning, referring to the facts and circumstances of the decided case, it is seen that until and unless the rights of the

petitioner have been recognised by the competent authority in respect of these

moveables, we are afraid no such rights could be established in a court of law to seek for claim of such rights.

33-A. Considering these legal concepts and referring to the arguments advanced by the learned Senior counsel for the petitioner with a view to

establish Petitioner's claim over these moveables, the Court will have to take into consideration the following events :--

Though an attempt has been made by the petitioner to show that he wanted to claim exemption as provided under the Wealth Tax Act, 1957 with

a view to seek an exemption from payment of tax in regard to the family utensils. namely, heirlooms as found within the provisions of the said Act.

It is true that there is an exemption provided from making payment of tax when such articles are being assessed for tax. But the question remains

whether the petitioner has taken any action to bring all these 563 articles to be taxed and thereby claimed exemption ? The overwhelming answer

to this is emphatically, no, because even after inspection by the Experts Committee appointed by the Hon'ble Supreme Court, after submitting the

report by the said Committee, it was not the case of the petitioner that he has taken action to bring all these articles within the assessment order

under the Wealth Tax Act, 1957. But it is nobody's case. Therefore, all that we can gather from the action on the part of the petitioner is that it was

only an attempt to show that he exerts his rights over these moveables, but, unfortunately, there is nothing tentatively including assessment of tax in

respect of other articles which are not said to be heirlooms.

Now, coming to the word ""heirlooms"", it is necessary for us to apply our mind to this aspect of the matter. In the Black's Law Dictionary, the word

heirloom"" is described as follows :--

In general, valued possession of great sentimental value passed down through generations within a family.

In old English Law, such goods and chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance,

and not to the executor. The termination ""loom"" (Sax) signifies a limb or member, so that an heirloom is nothing else but a limb or member of the

inheritance. They are generally such things as cannot be taken away without damaging or dismembering the freehold; such as deer in a park, doves

in a cote, deeds and charters, etc.

Wharton's Law Lexicon has defined the word "heirloom", as follows :--

Personal chattels, such as charters, deeds, and evidence of title, coat armour set up in a Church, or a tombstone erected there, which go to the

heir, together with the inheritance. The ancient jewels of the Crown are heirlooms. Heirlooms strictly so called are now rarely met with.

The term 'heirlooms' is often applied in practice to the case where certain chattels for example, pictures, plate, or furniture are directed by will or

settlement to follow the limitations thereby made of some family mansion or estate. But the word is not then employed in its strict and proper sense,

nor is the disposition itself beyond a certain point effectual for such case, belong absolutely to the one who under the limitations of the becomes entitled

to the real estate for a vested estate of inheritances

During the course of arguments, it is brought to your notice that before the death of late Maharaja Hari Singh in Bombay in the year 1961, he left a

will which is said to be his last will, executed by him. It is stated that the testator has left both moveable and Immovable property to certain persons

and nothing to bequeath in favour of the petitioner (Dr. Karan Singh).

Unfortunately, when the learned Single Judge of this High Court having considered the provisions of Hindu Law of Inheritance in the course of his

judgment and having referred to the right of the petitioner to inherit the estate left behind by his father Maharaja Hari Singh, he failed to consider

this aspect of the matter. Indeed, nothing is said in the said will about these 563 articles found in the 'Toshkhana' (Treasury of the State), which

goes to show that the original owner Maharaja Hari Singh himself never wanted to claim any right over these properties. Therefore, the question of

the right of inheritance of these moveables by the petitioner would not arise. If we take into consideration the last will, executed by his father,

perhaps the petitioner would not be entitled to anything, much less these moveables.

As a matter of fact, it could be gathered from the English Law that what is left in the Treasury "Toshkhana" under the control of the State a

sovereign power will be creation of the State, in the absence of any specific right created otherwise by any other person. Referring to the sovereign

power of the State, the Hon'ble Supreme Court had the occasion to deal with such a question in H.H. Maharajadhiraja Madhav Rao Jivaji Rao

Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, a bench of 11 Judges considering the scope of Article 366(22) and

Article 362 and 291 of the Constitution of India referring to a claim by the Ex-Ruler, at para 127, the Hon'ble Supreme Court has held, as already

quoted at page 35 of this judgment.

Indeed, purview in the above said paragraph, with reference to the right of inheritance by a Hindu family, is supported by the view taken by the

Supreme Court in Kunwar Shri Vir Rajendra Singh Vs. The Union of India (UOI) and Others, . Considering the similar question of right of

inheritance by the successor of the Ex-Ruler, holding the private property of the last deceased Ruler, the Hon'ble Supreme Court held, as follows

:--

The first question which falls for consideration is whether there is any infringement of Articles 19(1)(f) and 31 of the Constitution by any executive

fiat or the Government order. The petitioner's contention is that by the executive order private properties worth more than three Crores of rupees

were handed over to the Ruler in violation of the petitioner's fundamental rights of property. The notification dated 13th December, 1956 published

in the Gazette of India on 22nd December, 1956 was as follows :--

In pursuance of Clause (22) of Article 366 of the Constitution of India the President is hereby pleased to recognise His Highness Maharaja Rana

Shri Hemand Singh as the Ruler of Dholpur with effect from 22nd October, 1954 in succession to His late Highness Maharaja Adhiraja Sri Sawai

Maharaj Rana Sri Udaibhan Singh Ji Lokendra Bahadur Diler Jang Jai Deo....

It is apparent that there is no notification by virtue of which the Ruler became entitled to private properties. The notification which recognised the

Ruler thereby became entitled to private properties of the late Ruler. Mr. Attorney General appearing for the Union also made it clear that no right

to property flowed from the Government order of recognition of Rulership. It is manifest that the right to private properties of the last Ruler depends

upon the personal law of succession to the said private properties. The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This

recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive

jurisdiction of the President. The act of recognition of Rulership is not, as far as

the President is concerned, associated with any act of recognition of right to private properties. In order to establish that there has been an infringement of rights to property or proprietary rights, the petitioner has to establish that the petitioner owns or has a right to property which has been infringed by the impugned Act. In the present case, the petitioner cannot be heard to say that the petitioner possesses any private property which has been invalid. The petitioner's contention fails for two reasons.

First, the recognition of Rulership by the President does not, as far as the President is concerned, touch any of the private properties claimed.

Secondly, the petitioner does not possess any private property which has been affected by the act of recognition of Rulership. It must be stated here that as far as the right to privy purse of a Ruler is concerned, Article 291 of the constitution enacts that payment of any sum which has been guaranteed to any Ruler of a State as a privy purse shall be charged on and paid out of the consolidated fund of India. The privy purse is not an item of private property to which the Ruler succeeds. Counsel for the petitioner also realised the effect of Article 291 and did not press the contention of privy purse being a private property. (Please see para 9 of the judgment).

34. As we have already pointed out in the aforesaid paragraphs, referring to a finding recorded by the learned Single Judge of this High Court in the course of the judgment, under appeal, that the petitioner is a Hindu by faith, therefore, he will be governed by the Hindu Law. Thus, referring to the provisions of the Right of Inheritance by a HUF, the petitioner is entitled to inherit what was left by his ancestors as his personal property etc.

But it is seen, there is no specific foundation laid in the writ petition, much less it is argued in the appeal that the petitioner's claim is based upon the right of inheritance under the (sic) undivided Hindu Family (HUF) invoking the general provisions of inheritance by HUF. But we have referred to the general proposition of law in this context to find out as to whether his claim as such is acceptable to the Court or not in regard to these items of moveables. As we have already pointed out that when the late Maharaja Hari Singh died and passed away in Bombay in the year 1961, he left his last will in which nothing is bequeathed in favour of his son (Dr. Karan Singh). Therefore, we think there is no dispute about this fact. We can

understand in a case where the 'Karta' of a family, the erstwhile Maharaja having put forward such a claim over these moveables and that after his death his son Petitioner had to continue to seek for the right of inheritance pursuing such a claim by the 'Karta' of a family, perhaps there was some case which the Court ought to have considered. But in the present case, there is something different inasmuch as since the former Ruler Maharaja Hari Singh did not put forward any claim during his lifetime much less given a scope for his son (Dr. Karan Singh) to seek for such a claim in respect of these moveables by virtue of his right of inheritance, we do not think that the Court will have to follow this line of thinking in the present case. Therefore, we are of the view that the finding recorded by the learned Single Judge which we have extracted in the above said paragraphs may not be in tune with the actual proposition of law required to be applied in a case like this. In nutshell, we may say that since the former Ruler did not claim these properties to be his private properties and there is no consensus between the two parties, namely, Union of India and the former Ruler, in the absence of any such specific orders made by the Union of India recognising such a right as his personal properties, we do not think that such a claim by the petitioner in respect of these moveables is supported by the legal concept arising out of HUF much less the consequence of accession.

35. In this connection, the view taken by the Supreme Court in *Kunwar Shri Vir Rajendra Singh Vs. The Union of India (UOI) and Others*, at para 9, which we have already extracted above, it is abundantly made clear that, firstly, so far as the recognition of Rulership by the President is concerned, it does not touch any of the private properties claimed; and, secondly, the petitioner does not possess any private property which has been affected by the act of recognition of Rulership. Therefore, considering this line of thinking and applying the law laid down by the Supreme Court to the facts and circumstances of this case, we are clear in our mind that as there was no claim put forward much less such claim having been recognised by the Union of India, for 30 years the writ petitioner did not raise his little finger in respect of these moveables till 1983. Therefore, we do not think that the Court could recognise such a right in respect of these moveables at this point of time. The finding recorded by the learned

single Judge contrary to this view of ours, cannot be sustained and the same is liable to be set aside.

36. We will now take up 2nd question, which read as follows : Question-ii :

Whether the Union of India and the State Government of Jammu and Kashmir were able to establish that there is abandonment of rights, if any, in

respect of these moveables by the original owner or whether the original owners have been estopped from claiming their rights, if any, by virtue of

their conduct ?

This question deals with the legal contentions raised by both, the Union of India and the State of Jammu and Kashmir, that on account of the

conduct of the petitioner, there is an abandonment of all rights, if any, in respect of these moveables by the original owner. In the alternative, the

law of estoppel would come in preventing the petitioner to claim the same.

It has been mentioned throughout by the State Government that till a representation was made by the petitioner to the Union of India opposing the

Press release made by the State of J & K on Oct. 20, 1983 to prevent the State of Jammu and Kashmir from disposing of these valuable

moveables that is at the end of 1983 and till such time neither the former Ruler Maharaja Hari Singh nor his son, Petitioner (Dr. Karan Singh) made

any attempt whatsoever to establish a claim over these valuable moveables. That means for a period of thirty years there was no claim whatsoever

made by the Ex-Ruler in respect of these moveables. After accepting the list of items of properties. A, B and C by the former Maharaja in regard

to certain properties which were accepted by the Union of India and granting permission to enable the Maharaja to enjoy those properties

scheduled in the lists A, B and C, there was no claim whatsoever in respect of these moveables.

37. It is brought to our notice that by virtue of the representation made by the petitioner on to the Ministry of Home Affairs Union of India, a

question arose in regard to the original ownership of these moveables. The contention was taken on behalf of the State that it was a vexatious claim

seeking certain valuables found in the 'Toshkhana' (Treasury of the State) and that either the Ex-Ruler or his successor never claimed them as

private property. There was a starred question in the Parliament, as could be gathered in the Paper-book (Vol. 1 at page 141 at page 143). The

relevant extract of page 143 is reproduced, as follows :--

In the case of Jammu & Kashmir there is no mention about the jewellery, etc. in the inventory of private properties of the Ruler of Jammu and Kashmir as approved by the Government of India.

This was the statement made by the concerned Ministry. In the note of para 6 at page 143 (Paper-book Vol. I), it is further stated, as follows :--

On the commencement of the Constitution (26th Amendment) Act, 1971, with effect from 28th December, 1971, the Government were advised

that the Constitution Amendment Act, 1971 did not affect the properties that had been recognised as the private properties of the former rulers in

accordance with the provisions of the merger Agreements. That being so, the properties which has vested in the Rulers in accordance with these

settlements will continue to remain with them. As regards items of regalia which were declared as State properties but were allowed to be

retained by the Rulers for use on ceremonial occasions subject to inspection by the authorities concerned, the position is that after the

commencement of the Constitution (Twenty six Amendment) Act, 1971, official recognition of the rulership has been withdrawn and there appears

no need for the display of these regalia. The State Governments were accordingly addressed to consider asking the former Rulers concerned to

return the items of regalia which are State properties but are with the former Rulers .

It appears to us in view of the foregoing that the Union of India has taken a specific stand that in view of the Constitution (26th Amendment) Act,

1971 and the consequential situation emerging therefrom, the claim of the petitioner in respect of these moveables was rejected. It is stated that the

stand taken by the Union of India in the counter-affidavit presented in the writ-petition, as found at paragraph-1, at page 98 of the paper-book

(Vol. I), there is a specific plea that as per notification dated August 18, 1958 issued by the Ministry of Finance with regard to exemption of

heirloom jewellery from wealth-tax, it may be mentioned here that in the same manner in 26 other cases recognition was accorded to the

jewellery and heirlooms of the Ex-Rulers from payment of tax under the Wealth Tax Act, 1957. It is pointed out that as there was no such

declaration made by the Ex-Ruler of Jammu & Kashmir State nor by his

successor (Petitioner) in respect of the properties lying in 'Toshkhana', therefore, question of making such declaration or recognition did not arise.

In the rejoinder filed by the petitioner, he has not denied this fact. However, the stand taken by the petitioner that in the absence of such an

application seeking exemption from payment of wealth tax in respect of these moveables did not prevent him from seeking exemption in respect of

heirlooms. This itself clearly goes to show that there was no claim or declaration made by the Ex-Ruler or his successor (petitioner) to establish a

right over these properties as private properties. We have dealt with in detail about the assessment made in regard to three years in respect of

certain other items, though no tax is paid so far for the same. As we have already pointed out that there was only an attempt to seek for exemption

under the relevant provisions of the Wealth Tax Act, 1957 and nothing more.

38. The argument of learned Advocate General on behalf of the State is that in the absence of such a claim having been made by the Ex-Ruler or

his successor (petitioner), the Union of India having considered this aspect of the matter has already rejected the representation made by the

petitioner though a review as against such an order is pending with the Government of India. Therefore, he submits that in view of the inordinate

delay in seeking to establish a claim over these properties by the petitioner, the Court must take into consideration the matter in respect of

abandonment or disclaimer or in the alternative the law of estoppel and considering the same, the Court will have to record a finding that the

petitioner has no right, even if such rights were in existence now they are lost on account of the application of law. In support of this contention on

behalf of the State of Jammu & Kashmir, Shri Gupta learned advocate appearing for the Union of India also contended that in view of the

discussions made in the Parliament consideration, by the Union Home Ministry and rejecting the representation of the petitioner regarding any right

in respect of these moveables, as claimed by the petitioner, the petitioner has no case. He further submitted that the finding recorded by the learned

Single Judge in respect of 42 items (heirlooms), is not sustainable in law.

Article 49 of the Indian Limitation Act of 1908, the period of three years is provided seeking to claim before the Court of law in regard to

moveables. In the face of the fact that there is an enormous delay in the present

case the Court simply refused to grant relief on account of inordinate delay. This is the view taken by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, . Shri Gupta,

learned counsel for the Union of India invited our attention to para 21 of the judgment where it is stated, as follows :--

... assuming that the remedy of recovery by action in a civil court stood barred on the date these applications were made that would be no reason to refuse relief, under Article 226 of the Constitution.

This was the argument, but the view taken by the Supreme Court is as follows :--

... It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil Court must be

brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This court

may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is

more than this period. It will almost always be proper for the Court to hold that it is unreasonable...

Therefore, Mr. Gupta, learned advocate for the Union of India, submits that the Court cannot take into consideration the claim of the petitioner at

this point of time.

Article 119 of the Limitation Act deals with the residuary clause, which provides only six years to claim in respect of moveables. The submission is

that even applying this provision of law, the petitioner would not be entitled to claim this right.

39. It is stated by the learned counsel, representing both the respondents that in a biography titled 'Kashmir Towards Insurgency' by Balraj Puri,

narrating the life sketch of Dr. Karan Singh (Petitioner) printed and published in 1963. at pages 50 and 96 of the said biography, there is a mention

that case aluable moveables were said to have been surrendered by the petitioner which may be taken into consideration by the Court. We have

perused the relevant portion of the said biography, but there is no mention of any specific articles of moveables, though there is a word ""surrender"".

This is with a view to impress upon the Readers that the Ex-Ruler has left these valuable moveables to the State Government. We do not think that

apart from this we can gather anything more from this biography.

After relinquishment of rights of the Ex-Ruler pursuant to the instrument of accession, five items including Singhasan were given on loan by the

State of J & K to the petitioner (Dr. Karan Singh). This very action on the part of the petitioner goes to show that he was unable to establish any

right over these articles as his personal or private properties. His submission that by his very conduct the petitioner indicated disclaimer or

abandonment of his right Over these articles, if any subsisting, on the relevant point of time. Referring to the scope of Section 115 of the Evidence

Act making distinction between the act of waiver and the concept of estoppel, referring to the relevant laws, the Hon'ble Supreme Court laid down

the following law in Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, at page 1840 :--

The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the

inference of the relinquishment of such right. It means the forsaking the assertion of a right at the proper opportunity. The first respondent filed suit

at the proper opportunity after the land was transferred to him and no covenant to treat the appellants as Thika tenants could be shown to have run

with the land. Waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel

such intent is the detriment of the other party. An estoppel may resuk though the party estopped did not intent to lose any existing right. Thus,

voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the

conferment of the right in question.

(please see para 21 of the judgment).

In the instant case it is hardly the case of the petitioner that he claimed any right in respect of these moveables at the relevant point of time, either

while an opportunity was given to him by the Government of India to declare such properties as his private properties or he was able to take steps

to assert his right, if any, over these moveables. Looking to the nature of the circumstances and the conduct of the petitioner, it is overwhelming

that till 1983 no attempt whatsoever was made, either by the Ex-Ruler or by his son (petitioner) to do so. Therefore, the provisions of Section 115

of the Evidence Act comes. In taking into consideration the ruling of the Supreme

Court in Provash Chandra Dalui's case (*supra*), there is no difficulty for the Court to hold that either there was relinquishment of right or waiver voluntarily. Therefore, a finding must be recorded against the petitioner (Dr. Karan Singh).

40. As we have already pointed out by virtue of the constitution (Amendment Act), 1971, the display of the Regalias which were allowed to be used by the Ex-Rulers are required to be returned to the Government as there is no longer need to display these Regalias. Therefore, the implication of the law by virtue of the Amendment Act, 1971 is that if any of these articles were said to be either Regalia or heirlooms, since they ceased to be considered as such and exhibited in view of the amendment Act, 1971, they ceased to be the Regalia or heirlooms. In other words, as on today, even if 42 articles which were said to be heirlooms, finding of the learned Single Judge of this High Court presuming it to be so, but then as on today they are ceased to be heirlooms. This is another view taken against the petitioner.

41. Therefore, in view of the above discussion and the findings, it appears to us that a case is made out by the respondents, Union of India and the State of Jammu & Kashmir, to accede to their contention that considering the provisions of Section 115 of the Evidence Act and also referring to the concept of waiver, disclaimer or abandonment, regard being had to the facts and circumstances of the case, there is sufficient material before the Court to record a finding against the petitioner (Dr. Kuran Singh) in regard to his claim over these moveables. As such, we record our finding accordingly in favour of respondents 1 and 2 in Appeal No. 60 of 1989.

42. Before parting with this case, we would like to say a word about the nature of the claim put forward by the petitioner in respect of these moveable properties found in 'Toshkhana' (Treasury of the State of Jammu & Kashmir) as on the date when the territory of J & K State was brought within the dominion of India. Regard being had to the provisions of Article 363 of the Constitution, any claim arising out of such dispute by the Ex-Ruler cannot be granted to by a Court of law for purposes of giving relief. In *Maharaja Pravir Chandra Bhanj Deo Kakatiya Vs. The State of Madhya Pradesh*, a bench of five Judges, under Articles 363 of the Constitution of India dealing with a dispute arising out of merger agreement

of instrument of Accession, held as follows :--

Two questions in the main were urged before us (1) whether the appellant is a proprietor within the meaning of that expression in the Act and (2)

whether the villages in question came within the definition of the word 'mahal' contained in the Act. On behalf of the appellant it had also been

urged that the Act could not defeat the rights of the appellant guaranteed under Article 3 of the Merger Agreement. It seems clear to us, however,

that in view of the provisions of Article 363(1) of the Constitution any dispute arising out of the Merger Agreement or the Instrument of Accession

is beyond the competence of the courts to enquire into. The High Court rightly decided this point against the appellant.

(Please see para 6 of the judgment).

43. In the light of this ruling and the authorities and for the reasons referred to above, we hold that the petitioner has failed to make out a clear case

establishing his right over these valuable moveables. Further, the finding of the learned Single Judge in regard to 42 items of heirlooms in favour of

the petitioner has to be set aside. It is accordingly set aside.

44. In the result, the appeal as brought by the appellant (Dr. Karan Singh) Appeal No. 60 of) 989, stands dismissed and the appeals as brought

by the Union of India Appeal No. 64 of 1989 and appeal brought by the State of Jammu & Kashmir, Appeal No. 39 of 1989, are allowed. The

conclusion arrived at by the learned Single Judge in Writ petition No. 122 of 1984 made in favour of the Petitioner (Dr. Kuran Singh) in regard

to 42 items of heirlooms, is set aside. Parties are left to bear their own costs.