



SJA NEWSLETTER

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Topic of the Month

Chief Patron Hon'ble Mr. Justice F.M. Ibrahim Kalifulla Chief Justice	
Judge Incharge Hon'ble Mr. Justice Mansoor Ahmad Mir	
Editor Suresh Kumar Sharma Director SJA	
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The Editor SJA Newsletter Jammu & Kashmir State Judicial Academy Janipur, Jammu-180001 Ph: Jammu: 0191-2530871 Srinagar: 0194-2472078 Fax: Jammu: 0191-2530783 Srinagar: 0194-2472078 Web-site: www.jkja.nic.in E-mail: jkja@nic.in	
Compiled, Composed & Layout Pankaj K. Gupta Deputy Registrar	

The National Mission to improve the delivery of justice is at work.

In October 2009, on the basis of a Vision Document adopted at a judicial conference in New Delhi, the Government of India approved in principle a National Mission to reduce pendency and delays in the judicial system and enhance accountability through structural changes, higher performance standards and capacity-building. Many past attempts to achieve the goals did not yield results because of lack of institutional capacities, inadequate funding and want of a political will.

When it was realised that without judicial reform the development agenda cannot be carried forward, the 13th Finance Commission made specific recommendations for the grant of funds to improve justice delivery. The Union government announced a series of policy initiatives aimed at reducing pendency from an average of 15 years to three years — within a three year period. It was considered by many as too ambitious for a system used to chronic delays, outmoded procedures and indifferent management. With the money made available and strategies and plans worked out, the government has now come up with a National Mission to accomplish the goal within five years, coinciding with the period of the 12th Five Year Plan. This is a look at the Mission Goals, analysing the components of the Action Plan, examining the strategies proposed and evaluating the prospects, given the conditions on the ground and the constraints.

The catalyst

For a long time, the judiciary was outside the radar of the Planning Commission which distributed development grants. And when the Commission started providing funds, it turned out to be too meagre to make any capacity improvement. The State governments did not increase the number of courts required to handle the mounting number of cases, and the existing ones did not get the needed infrastructure. The judiciary is still to acquire information and communication technology (ICT) support systems to modernise processes, and continues to labour under the weight of over three crore pending cases.

Setting a condition that the government, the single largest litigant, frame a litigation policy aimed at reducing avoidable and unnecessary litigation, the Finance Commission recommended a grant of Rs. 5,000 crore to improve judicial outcomes through six strategic initiatives. These included increasing the number of court working hours, using the existing

infrastructure but conducting proceedings in morning/evening hours under a shift system. Other measures involved increased use of Lok Adalats to ease pressure on courts, promotion of Alternative Dispute Resolution methods, training of judicial officers and public prosecutors to enhance capacities, addition of facilities in judicial academies, and the creation of posts of Court Managers in every judicial district to assist in administrative functions. The Central government issued a series of orders sanctioning funds and providing guidelines for the utilization of the grants. The State governments have started issuing orders for utilization.

Strategic initiatives

The Department of Justice, now headed by an independent Secretary-level officer under the Ministry of Law and Justice, has assumed the role of the Mission Directorate with the Secretary to Government as Mission Leader. Judicial reform is now as much a function of the government as it is of the judiciary. The Planning Commission has constituted a Working Group on Justice to prepare the demands of the justice system under the 12th Plan, and one can expect continued support, besides the Finance Commission allocations, for the Justice Department's Mission initiatives. The time is opportune for a breakthrough in the delivery of justice through the National Mission. The first step is to understand the implications of the Strategic Initiatives of the Action Plan and respond to the role and responsibilities envisaged under it. The Action Plan contemplates five strategic initiatives: policy changes, re-engineering procedures, human resource development, leveraging ICT and improving the infrastructure of the subordinate judiciary.

Among policy initiatives, the government has moved legislation proposing to increase High Court judges' retirement age and enhance judicial standards and accountability. National and State litigation policies are in the process of implementation as part of the National Mission. The All India Judicial Service is being taken up for Parliament's consideration. Improving the capacities of the judiciary proportionate to the workload is under way through judicial impact assessment as part of the legislative process. To improve human resources, legal education reforms are being considered.

Re-engineering of processes by removing bottlenecks and fast-tracking procedures constitute a major strategy to reduce delays. This may require amendments to statutes and rules; the Law Commission is being asked to work on it. Together with Lok Adalats, mediation, plea bargaining and negotiated settlements, a large part of pending cases is expected to be resolved. Clubbing similar kinds of

cases, leaving administrative functions to Court Managers, introducing modern management tools and systems for docket and case management and so on, are other strategies mooted. In 2007, the e-courts project was initiated at a cost of Rs.440 crore (now revised to Rs.935 crore) to provide ICT infrastructure in district and subordinate courts and to computerise judicial records. This is scheduled for completion by 2014, enabling the National Arrears Grid to be operational for integration with the Mission Plan. With the introduction of e-courts, along with video-conferencing, e-filing and related ICT-enabled services, the justice delivery system can be transformed to become people-friendly, less expensive and expeditious.

The human resource component will still be critical, and as such the Mission proposes not only to fill up judicial vacancies but also strengthen training through judicial academies. Efforts to provide continuing education and training for lawyers and public prosecutors are under way with the involvement of Bar Councils and law schools. Many of the shortcomings in the institutions and procedures can be overcome if motivated, competent personnel are available in adequate numbers.

Another component of the Mission involves the development of infrastructure in district and subordinate courts. During the 12th Plan period, all the 15,000 courts are expected to have buildings and equipment for them to be able to operate with efficiency. For this, substantial funds are sought to be provided by the Union government on 75:25 sharing basis. States have been asked to develop the design of modern court complexes in every district and estimate fund requirements. Hopefully, the judicial architecture will soon see a decisive change in terms of efficiency and towards a litigant-friendly atmosphere. Gram Nyayalayas to help rural folk access inexpensive justice at their doorsteps is another step envisaged. Again, with police modernisation, forensic science development, criminal tracking network system and similar initiatives being implemented, it is hoped that criminal justice will soon have a human face.

Popular support

The plan is ready and the funds have been made available. Now what is needed is time-bound implementation in mission mode by the functionaries, and popular support to sustain the momentum. Unfortunately, even informed sections do not believe that pendency and arrears can be controlled given the prevailing mindset of those in charge of the systems, and the undue benefits the vested interests enjoy by keeping the systems as they are. The litigant public seems to be reconciled to their

fate and the powerful among them are increasingly using extra-judicial methods to get their due.

Of course, this was the sentiment in the early-1990s about the economy as well. A decisive leadership took the risk and made the change possible, which the people welcomed in due course. Can such a thing happen in the judicial sector in the present context when the political will seems to be forthcoming and the funds have been provided? Let there be a campaign for judicial reform among the public to get the actors motivated by the leadership to take the Mission seriously for the cause of justice and development.

[Article published in the newspaper 'The Hindu' on 26th October, 2011 penned by Dr. Madhava Menon, former Vice-Chancellor of the National Law Schools in Bangalore and Kolkata and a member of the Advisory Council of National Mission for Justice Delivery and Legal Reforms set up by the Government of India]

ACADEMY NEWS

1. Workshop for Judicial Officers organized at Srinagar

State Judicial Academy organized a workshop on the topic 'Importance of Procedural Laws in speedy disposal of civil cases with special reference to Civil Laws (Amendment) Act, 2009' on 15th of October, 2011 for the judicial officers of Kashmir Province at High Court complex, Srinagar. Mr. G.A. Lone, retired District and Sessions Judge was the Resource person.



Resource person while addressing the participants

In his address, Mr. Lone said that the amendments carried in the Code of Civil Procedure by way of 2009 amendment if implemented in their true spirit will surely enable and facilitate the civil court to dispose off the civil cases expeditiously. While referring the various amendments, Mr. Lone made the

participants aware that how these amendments would enable them to achieve the goal of timely disposal of a civil matter. He also emphasized upon the Judges to make a serious effort on their part to settle the case by way of mediation, conciliation and through Lok Adalats, before the settlement of Issues in light of relevant amendment made in the Code of Civil Procedure because by doing so they on one hand will follow the procedure in true spirit, on the other, if the matters are amicably settled it will also certainly help in creating harmony in the society.



Workshop in Session

Speaking on the occasion, the Director, SJA, Shri Suresh Kumar Sharma said that Judges must change their mindset to keep pace with changing times so that object to bring any such amendment is fully achieved. The participants had a healthy discussion with the resource person on the topic by putting the practical difficulties faced by them in their day to day working and got the clarifications from the expert. The vote of thanks was presented by Moulvi Javed Ahmed, Faculty Member of the Academy.

2. Training programme for staff of the Hon'ble High Court, Jammu Wing

In its endeavor to bring the efficiency & efficacy in each component having a role in justice delivery system of the State, the State Judicial Academy organized a training programme on Sunday, the 16th of October, 2011 for the High Court staff on the topic "Duties of Ahalmads vis-à-vis maintaining of Judicial Files", in High Court complex Jammu. The staff of the Registry upto the rank of Assistant Registrars participated in the programme. Mr. Jagdish Raj Thakur former Bench Secretary & faculty member of the Academy was the resource person.

Mr. Thakur dealt in detail with the duties of the Ahalmads and other officials of the Registry right from those engaged at filing counter to the Civil, Criminal, SWP, OWP, LPA or any other section. He made the participants aware of different rules formulated from time to time by the Hon'ble High

Court governing the filing of different kind of cases before it and also provided some beneficial tips to them which on one hand would help them to perform their duty in a more professional way, on the other, it will render a proper assistance to the Hon'ble Judges resulting in saving the precious time of the Courts.

Speaking on the occasion, Mr. Anoop Sharma, Munsiff posted in the State Judicial Academy told the participants that the Academy is intending to enhance the capacity, capability and professional excellence of each individual of the judicial institution, whatsoever will be his role and contribution so that the system as a whole is able to deliver in a more effective manner and come upto the expectations of the public in general and the litigants/Justice seekers in particular.

The participants were benefitted a lot and made a request to the Academy to organize such programmes in near future also.

NEWS AND VIEWS

Hon'ble the Chief Justice of High Court of Jammu & Kashmir directs government to settle a death case within 10 days

Hon'ble Chief Justice of the Jammu and Kashmir High Court Justice F.M. Ibrahim Kalifullah has directed the Government to consider a case of next of kin of a deceased person and settle it within ten days.

The directions from the Chief Justice came after one Mohammad Yousuf Dar in an application said that his father Abdul Gani Dar died under mysterious circumstances six years ago.

He said that despite making repeated efforts to seek the relief under SRO-43 (providing employment to one member of the deceased family), the same was denied to him which resulted in deprivation of basic necessities of life to the family of deceased.

The Chief Justice after hearing the aggrieved asked Deputy Commissioner, Budgam, who was also present on the occasion, to consider the case of applicant without any further delay and dispose it within 10 days.

Similarly, several grievances both individual and common were put forth at Choon village before Hon'ble the Chief Justice which were redressed on the spot.

Hon'ble the Chief Justice was hearing a number of grievances put forth by the locals after inaugurating the Legal Aid Centres at Budgam in central Kashmir.

Saying that providing Free Legal Aid to people is a great service to society, Hon'ble Justice Ibrahim made a fervent appeal to the media to create awareness about the benefits of Legal Aid Clinics in every nook and corner of the state.

(UNI/14.10.2011)

Provide basic facilities in all government schools: SC to all States, Union Territories

The Supreme Court directed the Centre, all states and Union Territories to provide basic facilities such as toilets and drinking water in all government schools across the country latest by December 31.

A bench comprising Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Dipak Misra was shocked to learn that in a large number of schools run by the government and local bodies, basic facilities like toilet and safe drinking water were not available.

Government schools are in hopeless condition and in a large number of schools, there were no classrooms and the children were forced to study under trees in inhuman conditions. There was a total lack of hygiene and sanitation in government schools.

The Hon'ble Apex Court has been issuing directions from time to time to improve the conditions of these schools. Majority of students in these schools belong to the weaker sections of the society.

(UNI/18.10.2011)

LoK Adalat cannot act as regular court :

Compromise between the parties is an essential ingredient of Lok Adalats

The Supreme Court held that the Lok Adalat cannot act as a regular court and ask the parties to act in the absence of a compromise. In the instant case the Lok Adalat had ordered the Life insurance corporation of India to pay a claimant Rs. 100,000 though the parties to the dispute had failed to reach a compromise.

Aggrieved by the order, LIC approached High Court but it refused to grant any relief to LIC. Holding that the Lok Adalat and the High Court both committed serious error, Hon'ble Supreme Court allowed the appeal of the LIC.

Delhi HC bans junk food and carbonated drinks in schools and colleges

Delhi High Court directed the Central Government to ensure ban on all carbonated beverages and junk food being sold at school and college canteens.

A bench comprising Hon'ble Mr. Justice AK Sikri and Hon'ble Mr. Justice Siddharth Mridul

directed the government to take effective steps to check the sale and supply of junk food from and near the educational institutions.

The court sought Centre's response on the steps taken by them in this matter and asked them to file their action taken report (ATR) by November 2. The court asked the Government to also file its ATR on the steps taken by them to create awareness among young generation about the harmful effects of increased consumption of junk food.

The Bench's reaction came on the affidavit filed by the government in the court about the health hazards posed by the junk food and carbonated beverages on the students.

The Bench said that it was not ready to hear government's arguments on this issue and directed complete ban of junk food in schools and colleges.

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Cr. Appeal No. 1845 of 2011)

Sadhwi Pragyana Singh Thakur v. State of Maharashtra

Date of Decision: 23-09-2011.

Judge(s): Hon'ble Mr. Justice J.M. Panchal and Hon'ble Mr. Justice H.L. Gokhale

Subject Index: Code of Criminal Procedure - Section 167 (2) - case related to Malegaon Bomb blast - appellant filed criminal application to enlarge her on bail on the ground of non-filing of charge sheet within 90 days as contemplated under section 167(2) of CrPC - urged that she may be treated to have been arrested on 10th October, 2008 from the date when she was being called for interrogation - High Court rejected her application - hence the appeal - held - the material facts clearly showed that there was no arrest of the appellant on October 10, 2008 but she was simply called for interrogation which is not equivalent to her arrest and detention - all throughout between 10th October, 2008 to 23rd October, 2008 when she was arrested, she was being accompanied by her disciple - she was produced before CJM, Nasik on 24th of October, 2008 seeking her remand and the chargesheet was filed before the expiry of 90 days from the date of first remand - appeal dismissed as the appellant has not claimed bail on merits.

(Case No: Cr. Appeal No. 1868 of 2011)

M/s Thermax Ltd & Ors. v. K.M. Johny & Ors.

Date of Decision: 27-09-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and

Hon'ble Dr. Justice B.S. Chauhan

Subject Index : Code of Criminal Procedure, 1973 - Section 156(3) - calling for a report under Ss 405, 406, 420 read with Section 34 IPC - whether ingredients of the offence required to be considered before issuing a direction u/s 156(3) of CrPC - a contract entered between the parties - dispute arose - the respondent No. 1 filed criminal complaint - the Judicial Magistrate issued a direction under Section 156(3) of the Code and referred the same to Crime Branch, Pune. Respondent No. 2 for investigation - writ petition filed - the High Court dismissed the writ petition as misconceived on the ground that the Magistrate has adhered to the directions and has given reasons for coming to his conclusion - whether the ingredients of Section 405, 420 read with Section 34 have been made out from the complaint - whether the Magistrate is justified in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune - whether the High Court is justified in confirming the action of the Magistrate and failed to exercise its power and jurisdiction under Section 482 of the Code - No - the dispute arose out of a contract and a constituted remedy is one before a Civil Court - documents on record showed that appellant - Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant-Company amounts to a breach of contract - the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC and the respondent No. 1 roped all the appellants in a criminal case without their specific role or participation in the alleged offence - the Supreme Court viewed that the Magistrate committed a grave error in calling for a report under section 156(3) of the Code from the Crime Branch, Pune - complaint filed by Respondent No. 1 quashed - appeal allowed.

(Case No: Cr. Appeal No. 1798 of 2009)

Kanwar Singh Saini v. High Court of Delhi

Date of Decision: 23-09-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Dr. Justice B.S. Chauhan

Subject Index : Civil Procedure Code, 1908 - Order XXXIX Rule 2A - Contempt of Courts Act, 1971 - sections 10, 11, 12 - application filed under - against the violation of the undertaking given by the appellant - dispossession from the suit premises - suit filed against - the appellant admitted the execution of sale deed in respect of the suit premises and handing over its possession to the plaintiff but denied the allegation that he had made any attempt to dispossess the plaintiff - Court recorded the statement of the appellant & disposed of the suit directing the appellant/defendant not to breach the undertaking

given by him. However, the High Court convicted the appellant for committing contempt of court by violating the undertaking given by him to the court at the time of disposal of the suit and awarded him simple imprisonment for four months - hence, the appeal - whether the application under Order XXXIX Rule 2A CPC or under the Act 1971 could be entertained by the Civil Court - the so-called statement/undertaking given by the appellant/defendant culminated into the decree of the Civil Court - the Supreme Court held that Application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings - the court initiated criminal contempt proceedings but ultimately after convicting the appellant did not enforce the order passed by the Civil Court - impugned judgment and order passed by the High Court set aside - appeal allowed.

(Civil Appeal No. 7453 of 2008)

M/s Grasim Industries Ltd. v. Union of India

Date of Decision: 13-10-2011

Judge(s): Hon'ble Mr. Justice H.L. Dattu and Hon'ble Mr. Justice Chandramauli Kr. Prasad

Subject Index: Central Excise Act and Rules, 1944 - whether the metal scrap or waste generated whilst repairing of worn out machineries or parts of cement manufacturing plant amounts to manufacture and thereby, is excisable to excise duty - held no - the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. Scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, which is the excisable end product, as since welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc which are used in the process of repair and maintenance are not raw material used to in the process of manufacturing of the cement, which is the end product - the repairing activity cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. Scrap and Iron scrap cannot be said to be a by-product of the final product - appeal allowed.

(Civil Appeal No. 8400-8401 of 2011)

Dnyaneshwar Rananath Bhandare & Anr. v. Saddhu Dadu Shettigar (Shetty) & Anr.

Date of Decision: 30-09-2011

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A.K. Patnaik

Subject Index: Possession of premises - suit filed for - the trial court decreed the suit in favour of appellants. However, the first appellate court held that appellants failed to prove that the respondents were gratuitous licensees or that they had encroached upon one room, thus, dismissed the suit for possession by appellants and decreed the suit for injunction by the first respondent. The order passed by the first appellate court were not disturbed by the High Court in second appeal - hence, the appeals - there was no lease deed or tenancy agreement to evidence the tenancy, nor were there any receipts for payment of any rent - the first appellate court failed to record any finding that the respondents were the tenants. The documents disclosed mere occupation of a portion of the house and it did not however infer from the documents that there is a tenancy - impugned judgment of the High Court and the first appellate court set aside and the decree for possession of the suit portions granted by the trial court restored - appeal allowed.

(Case No: Civil Appeal No. 8325 & 8326 of 2011)

Smt. Har Devi Asnani v. State of Rajasthan & Ors.

Date of Decision: 27-09-2011.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A.K. Patnaik

Subject Index : Rajasthan Stamp Act, 1998 - determination of the value of the purchased property - demand of additional stamp duty in question - the appellant purchased a plot for a consideration of Rs 18 lacs. The Sub-Registrar appointed an Inspection Officer to inspect the plot purchased by the appellant and determined the value of the land at Rs 2,58,44,260/- the additional Collector (stamps) made the demand of Rs 15,70,000/- on the appellant - writ petition filed - the High Court dismissed the writ petition holding that the appellant had a remedy against the order of the Additional Director by way of a revision before the Board of Revenue, the writ petition of the appellant challenging the determination of the value of the land and the demand of additional stamp duty and registration charges and penalty totalling to Rs 15,70,000/- could not be entertained under Article 226 of the Constitution - hence , the appeal - held the High Court has not considered whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution -

impugned order set aside and the petition remanded back to the High Court for fresh consideration in accordance with law - appeal allowed.

(Civil Appeal No. 8402 of 2011)

Pankaj Mahajan v. Dimple @ Kajal

Date of Decision: 30-09-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice A.K. Patnaik

Subject Index : Hindu Marriage Act, 1955 - Section 13 - petition filed under - for dissolution of marriage by a decree of divorce on the grounds of cruelty and unsound mind of the respondent-wife which is incurable - the Additional District Judge, granted a decree of divorce in favour of the appellant-husband, however, the High Court set aside the said order - hence, the appeal - held - cogent material produced on record to show that the respondent-wife is suffering from mental disorder, i.e. Schizophrenia. Even the respondent-wife and her father themselves admitted in their cross-examination that the respondent had taken treatment for mental illness - the appellant-husband brought evidence on record to show that the respondent-wife was not in a fit state of mind whereas the respondent-wife could not lead any acceptable evidence to rebut the same - the appellant-husband faced cruelty at the hands of the respondent on several occasions - the appellant-husband placed adequate materials to show that the respondent-wife used to give repeated threats to commit suicide and once even tried to commit suicide by jumping from the terrace - impugned order of the High Court set aside and the divorce petition granted in favour of the appellant-husband - appeal allowed.

Legal briefs from High Court of J&K

(Civil 2nd Appeal No. 09 of 2005)

Om Parkash v. Narinder Singh Puri

Date of Decision: 23-09-2011

Judge(s): Hon'ble Mr. Justice F.M. Ibrahim Klifulla, Chief Justice

Subject Index: Code of Civil Procedure - Judgment of trial court in a civil suit - what should it contain and the scope of the Ist Appellate Court - the respondent of this 2nd Civil Appeal instituted a suit for mandatory injunction directing the appellant to vacate and handover the vacant possession of a property which the appellant was holding as licensee - the trial court decreed the suit but in the judgment didn't adduced the reasons for having reached at such a conclusion - the first appellate court made a detailed discussion over all the Issues and affirmed the ultimate conclusion of the trial court - In the Civil 2nd

Appeal the substantial question of law that arose for the consideration was whether the First Appellate Court can concur with the findings recorded by the trial court wherein neither evidence has been discussed nor the reasons have been assigned by the trial court and whether the First Appellate Court can record its own finding of fact without having the benefit of such findings recorded by the trial court - Held - No - Having regard to the serious lacunae in the judgment of the trial court where it failed to adduce any reasons in support of the ultimate conclusions, it was held that the same cannot be supplemented by the reasons of the appellate court as that would negate the very purpose of the prescribed procedure stipulated under order XX Rule 5 of Code of Civil Procedure - Civil 2nd Appeal allowed - matter remanded back to trial court.

(Case No. OWP No. 203 of 2002)

Sona Wani & Ors. v. Financial Commissioner & Ors.

Date of Decision: 03-09-2011

Judge(s): Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index: Land Revenue Act - Order passed in terms of Section 8 of the Land Revenue Act by the Financial Commissioner - the same was questioned by the petitioner by filing a writ petition - held - that the order passed under section 8 of the Land Revenue Act cannot be made the subject matter of the writ petition, however, the aggrieved can seek appropriate remedy - writ petition dismissed.

(Case No. LPA No. 154 of 2008, IA(C) 256/2008

Suhail Ahmed Bhat v. State of J&K & Ors.

Date of Decision : 21-10-2011

Judge(s) : Hon'ble Mr. Justice J.P. Singh and Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index : Jammu & Kashmir Subordinate Service Recruitment Rules, 1992 - Preparation of Waiting List - J&K SSRB advertised three post of Asstt. Information Officer Grade I & one post of Assistant Information Officer, Grade -II - out of three Grade -I posts, one was re-served for Backward Area category - On evaluation of merit the last selected candidate competing for open merit found to have obtained 66.26 points - however one of the selected candidate in open merit did not join - Appellant who had secured 63.80 points and was next in merit filed a writ petition seeking direction against SSRB to prepare waiting list including his name therein as he was next in merit - Single Judge dismissed the petition holding that SSRB was not obliged to prepare waiting list in terms of J&K Subordinate Service Recruitment Rules, 1992 which

CASE COMMENTS

State of Haryana v. Mukesh Kumar & Ors.
Spl. Leave to Appeal (Civil) No. 28034/2011
Date of Decision : 30-09-2011

In the above noted case, Hon'ble Supreme Court of India has put a big question mark on the constitutional validity of law of adverse possession. The Bench comprising of Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Deepak Verma has held that the adverse possession allows a trespasser - a person guilty of tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asked the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The Bench has further held that the doctrine of adverse possession has troubled a great many legal minds and the time has come for change. It has further been observed that the archaic law of adverse possession is an example where the law and justice are on serious conflict, so a serious re-look is absolutely imperative in the larger interest of the people. The Hon'ble Court has asked the parliament to seriously consider at least to abolish 'bad faith' adverse possession, that is, adverse possession achieved through intentional trespassing. It has been opined that in case parliament decides to retain the law of adverse possession, the parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12. Such an extension would help to ensure that successful claimants have lived on the land for generations and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.

The Hon'ble Bench ordered for sending a copy of the judgment to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Union of India recommending to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession.

-(Anoop Kumar Sharma)
Munsiff

provides finalization of waiting list of only 20% of the total number of selected candidates - Appellant filed the instant LPA - Held - Rule 10 (vi) of the Jammu and Kashmir Subordinate Service Recruitment Rules, 1992 indicates that the Board is obliged to finalize waiting list of 20% of the total number of selected candidates - the rule would have no application where 20% of the selected candidates would not yield any vacancy for inclusion of the name(s) of the candidate appearing next in the merit list - Appeal dismissed.

(OWP No. 1239, 1344, 1367 & 176 of 2010)

Avtar Krishan & Ors. v. State of J&K & Ors.

Date of Decision: 07-09-2011

Judge(s): Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: Land Acquisition Act - Sec. 5A(2) of the same - a big chunk of land was acquired at village Kundrorian Katra for construction of new Bus stand - the petitioners of the above numbered writ petitions challenged the acquisition proceedings and issuance of the notifications u/s 4, 6, 9 and 9A and Section 17 of the Land Acquisition Act on various grounds including that the objections filed by them were not properly disposed by the Collector and they were not properly heard - held - when the Collector receives the objections in writing from the objectors, they have to be given an opportunity of being heard (Section 5A(2) of Act) - the Collector after hearing of such objections and making further enquiries has to submit case for decision to the Government together with the record of proceedings and his recommendations on the objections, where after Government has to take a final decision - the Collector himself is not competent to take any decision on the objections of the objectors - the record of the case was suggestive of the fact that the Collector in the instant matter had himself taken the decision instead of formulating his opinion and making the recommendation and the Government has proceeded on the premise that the petitioners have been satisfied by the Collector himself so issued Notification No. 22-RD of 2010 u/s 6 of the Act - Being so the acquisition proceedings u/s 6, 9 & 9A of Section 17 of the Land Acquisition Act viz-a-viz land of the petitioners was held to be invalid, however, notification issued u/s 4 of the Act was held to be valid - Collector directed to hear the petitioners in support of their objections in accordance with Section 5-A(2) of the Act and thereafter to formulate his report viz-a-viz each objection and recommendations thereon which report shall be submitted to Government and then Government to take any decision which shall be binding on the petitioners - the bunch of writ petitions accordingly disposed off.