(1976) 05 CAL CK 0022

Calcutta High Court

Case No: C.R. No. 7603 (W) of 1974

Dhanpat Singh Surana		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: May 3, 1976

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1)(f), 21, 22
- Contract Act, 1872 - Section 72
- Income Tax Act, 1961 - Section 269(1)

Citation: 80 CWN 605

Hon'ble Judges: A.K. Mookerjee, J

Bench: Single Bench

Advocate: Ashoke K. Sen, Somenath Chatterji, Mohitosh Mazumder and Asoke Kr. Ganguli, for the Appellant;Noni Coomar Chakraborty, S.C. Bose and Biswa Ranjan Ghosal for Union of India, G.N. Mitter, Advocate General, D.P. Gupta and Paritosh Mukerji for the State, for the Respondent

Judgement

Amiya Kumar Mookerji, J.
This is an application by the respondents for vacating the interim order of injunction passed by Mr. Justice Janah on 20th December, 1974 while issuing the above Rule. The petitioner moved an application under Article 226 of the Constitution wherein he, inter alia, prayed for: --

a) Declaration that Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and in particular Section 3 thereof is ultra vires the Constitution;

b) A Writ in the nature of Mandamus do issue calling upon the Respondents and each of them to recall, withdraw and/or to revoke the Procalmation of Emergency dated December 3, 1971 and not to give effect to the same in any manner whatsoever.

c) A Writ in the nature of Mandamus do issue directing the Respondents and each of them not to give any effect to the provisions of the said Act of 1974 and not to issue or enforce or give any effect to any order of detention Against your petitioner allegedly passed or to be passed u/s 3 of the said Act and not to take step or further step thereunder and to withdraw, recall and revoke any such order of detention against your petitioner.

d) A Rule asking the Respondents and each of them to certify and produce before this Hon''ble Court all records and proceedings relating to the purported order of detention passed or to be passed against your petitioner, as threatened, under the said Act of 1974 so that justice may be done by quashing and setting aside such purported order by a Writ of Certiorari.

e) Rule Nisi do issue in terms of the prayers above.

An interim injunction was granted to the effect that till the final dents and each of them were restrained dents and each of them were restained from issuing or enforcing or giving effect to any purported order of detention issued or to be issued against the petitioner under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and from restraining and detaining the petitioner under the said Act or any other law of preventive detention.

2. Petitioner carries on business as exporters of textile goods. On or about March 4, 1969 the business premises of the petitioner at Gauhati, Assam was searched by the Enforcement Officer of the Enforcement Directorate. Petitioner subsequently came to know that a complaint had been lodged by the Deputy Director, Enforcement Directorate with the Director of Central Bureau of Investigation, New Delhi with respect to certain transactions in Foreign Exchange between the years 1968 and 1969. Against the said search and seizure, the petitioner moved a Writ Petition in this Court and obtained a Rule Nisi, being Matter No. 130 of 1970 and an interim order of injunction. That Rule was ultimately discharged by Mr. Justice Sabyasachi Mukharji. Against the said order, the petitioner preferred an appeal, being Appeal No. 53 of 1972, which is still pending in this Court. On 1st of April, 1972 the residence of the petitioner at Calcutta was also searched under a search warrant issued by the Assistant Director, Enforcement Directorate. Thereafter, the petitioner received a Memorandum dated 3rd February, 1973 by which he was directed to show cause why adjudication proceedings should not be held against him for the alleged contravention of the provisions of Section 5(1)(c) of the Foreign Exchange Regulation Act, 1947 in respect of certain payments to the parties in India on behalf of and under instruction of a person resident outside India as per list attached to the said memorandum. Petitioner replied to the said show cause. He was informed that the adjudication proceedings against him would be held.

3. Petitioner has preferred the present Writ Petition under an apprehension that he may be detained under the Conservation of Foreign Exchangs and Prevention of

Smuggling Activities Act, 1974 and in suport of his prayer he has taken certain grounds viz., (a) that the said Act particularly Section 3 thereof is ultra vires the Constitution, (b) that the preventive detention order is malafide and (c) that the said detention order is made for collateral purpose.

4. It seems that the fate of the Rule is solely dependent upon the interim order of injunction granted to the petitioner. Elaborate arguments have been made on behalf of the petitioner covering all the points raised in the petition. Instead of keeping this Rule alive, it is desirable that both the Rule and application for vacating the interim injunction should be disposed of together.

5. It is stated by Mr. Chakravorty, appearing on behalf of the respondents that no order of detention under the COFEPOSA Act has yet been passed against the petitioner.

6. Now, let me examine the prayers in the petition. In prayer (a) to the petition, the petitioner prays for a declaration that the Conservation of Foreign Exchange and Prevention of. Smuggling Activities Act, 1974 and in particular section 3 thereof is ultra vires Constitution of India.

7. In Panna Lal Vs. The State of Uttar Pradesh and Others, , a Division Bench of the Allahabad High Court held that the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is not ultra vires the legislative powers of Parliament. Even if the subject matter of Legislation did not fall either in Entry No. 9 of List I or in Entry No. 3 List III of the Seventh Schedule of the Constitution, Parliament still had ample jurisdiction to legislate thereof as provided under Article 248(1) of the Constitution.

8. The said Act has been placed in the Ninth Schedule of the Constitution. So, any action taken under it cannot also be challenged on the ground of infringement of fundamental rights guaranteed in Part- III of the Constitution. That being so, no declaration can be granted to the petitioner in terms of prayer (a) to the petition. As regards prayer (b), it is now well settled that the Court has no jurisdiction to withdraw or revoke the Proclamation of Emergency. Mr. Justice Krishna Iyer, in Bhutnath Mete v. The State of West Bengal, AIR 1976 S.C. 806 observed "True, an emergency puts a broad, blanket blindfolding of the seven liberties of Article 19 and its baseless prolongation may devalue democracy. That is a political matter de hors our ken, for the validity of the proclamation turns on the subjective satisfaction of the President that a grave emergency, or the kind mentioned in Part XVIII, or its imminent danger, exists". So far as prayer (c) is concerned, no detention order has yet been passed against the petitioner. So the question of recalling or revoking the same does not arise at this stage. In prayer (d), the production of the records before this court relating to the purported order of detention passed against the petitioner has been prayed for. In absence of any actual order, the respondents could not be called upon to produce records relating to a non-existent order of detention. So, the

prayer in terms of (d) to the petition could not be given effect to.

9. It is contended by Mr. Chakravorty, appearing on behalf of the applicants-respondents that none of the grounds stated in the petition could be agitated by the petitioner unless he is served with the detention order with grounds thereof. Mr. Chakravorty further submitted that on similar facts and on similar grounds two Division Benches of this Court have vacated the orders of ad interim injunction. He referred to the decisions of Union of India v. Dhirubhai Gokuldas Vora, 1976 (1) C.L.J. 148 : 80 C.W.N. 372 and Kanhaiyalal Agarwala v. Union of India, 1976 (1) C.L.J. 293 : 80 C.W.N. 395.

10. In Vora''s case a Division Bench of this Court held that the Conservation of Foreign Exchange and Smuggling Activities Act has been included in the Ninth Schedule by the Constitution Amendment Act which came into force on 10.8.75. When it goes into the Ninth Schedule, Article 31B of the Constitution becomes applicable to it. The effect is that, after inclusion of the Act in the Ninth Schedule, any action taken under it cannot be challenged on the ground of infringement of fundamental rights. There is, therefore, no justification for adjouring the Original Writ Application sine die in view of the Proclamation of Emergency. It may be that an order of detention passed under the Act may be challenged on the ground that the conditions laid down in the Act have not been complied with or on grounds of malafide. So far as the present case is concerned, that aspect of the matter has not arisen for consideration in as-much as no order of detention had yet been made.

11. The Court further held that it could not pass an order rescinding, recalling or cancelling the Proclamation of Emergency passed by the President.

12. In Kanhaiyalal''s case (1976 (1) C.L.J. 293) it is held that interim orders are granted in aid of the main reliefs sought for in the action. Therefore, if it is not permissible to have enforcement of the rights under Articles 14, 19, 21 and 22 of the Constitution in any action during the period of emergency, it is obvious that such rights cannot also be enforced, though temporarily, within the period of emergency by virtue of the interim order of injunction. Accordingly, such injunction which amounts to enforcement of the said rights during pendency of the proceedings, though temporarily, is not available during the period of emergency.

13. The real question for determination in the Rule is, whether in anticipation of any order of preventive detention which is likely to be made by the detaining authority, a Writ of Mandamus or Prohibition would be available to the Petitioner commanding thereby the detaining authority not to pass or enforce any order of detention upon the petitioner. The main ground that has been made out in the petition is, that on the given facts in the petition, no reasonable person could form his subjective satisfaction that it was necessary to detain the petitioner under the COFEPOSA Act from preventing him in acting in a manner mentioned in section 3 of the said Act.

14. Mr. Chatterji, appearing for the petitioner Surana contends that a detention order is likely to be passed against the petitioner, Accordingly a Rule has been issued and an interim injunction has also been granted restraining the authorities not to pass any detention order. Before petitioner is actually detained, he is entitled to move the Writ Court praying for a Writ of Mandamus or Prohibition for the purpose of prohibiting the detaining authority not to pass an order of detention. The petitioner can apply for a Writ of Habeas Corpus only after he is detained and not before.

15. Reliance was placed on the following decisions of the Supreme Court and of the different High Courts : --

(1) The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , (2) State of Madhya Pradesh Vs. Bhailal Bhai and Others, , (3) Bombay Municipal Corporation and Another Vs. Ramachandra Laxman Belosay, , (4) Shashi Kant Rai Vs. Regional Transport Authority, Allahabad Region, Allahabad and Others, and (5) The Statesman Ltd. and Others Vs. The Fact Finding Committee and Others, .

16. In The Bengal Immunity Company Limited Vs. The State of Bihar and Others, a notice was issued by the Superintendent, Commercial Taxes, Central Circle Bihar, Patna calling upon the appellant company to apply for registration and to submit returns showing its turnover for the period commencing from 26.1.1950 and ending with 30.9.1951. That notice was issued u/s 13(5) of Bihar Sales Tax Act, 1947. The Assistant Superintendent of Sales Tax, Bihar subsequently called upon the appellant company to comply with the said notice and threatened that, in default of compliance, he would proceed to take steps for assessment to the best of his judgement. The appellant company in view of that threatening, moved an application under Article 226 of the Constitution before the Patna High Court. The High Court observed that the facts had not been investigated nor had the liability of the appellant company been determined and that in fact no order of assessment had been made. The High Court took the view that if on assessment the Sales Tax Officer erroneously held the appellant liable to any tax, the Act provides for rectifying that error by appeal or revision under Sections 24 and 25 of the Act. Accordingly the High Court held that the petition was not maintainable and was liable to be dismissed. On appeal before the Supreme Court, the Supreme Court observed that in reaching the above conclusion, the High Court appeared to have overlooked the fact that the main contention of the appellant company, as set forth in its petition, was that the Act, in so far as it purported to tax a non-resident dealer in respect of an inter-State sale or purchase of goods, was, ''ultra vires'' the Constitution and wholly illegal. In that context the Supreme Court said that if the Act was void under Article 265 read with Article 286 constituted; ''in presenti'', an encroachment on and an infringement of its right which entitled it to immediately appeal to the appropriate court for redress.

17. In State of Madhya Pradesh Vs. Bhailal Bhai and Others, the question did not arise before the Supreme Court that under what circumstances and under what conditions when there was a threat to infringe one''s right, an application under Article 226 would lie. The case before the Supreme Court was that, where sales tax, assessed and paid by the dealer, was declared by a competent court to be invalid in law, the payment of tax already made was one made under a mistake within Section 72 of the Contract Act, so the Government to whom the payment had been made by mistake must in law repay it. It has been held that in that respect, the High Court has, in exercise of its jurisdiction under Article 226 of the Constitution, power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law. Mr. Justice K.C. Dasgupta made an observation that where there has been a threat only and the right has not been actually infringed an application under Article 226 would lie and the courts would give necessary relief by making an order in the nature of injunction.

18. In Bombay Municipal Corporation''s case (AIR 1960 Bombay 58) a Councillor of the Corporation moved an application under Article 226 of the Constitution praying for issue of a Writ of Mandamus and/or Prohibition under Article 226 of the Constitution against the Corporation from discussing or endorsing a resolution regarding the execution of a former Prime Minister of Hungary and his three associates. It was urged that the Corporation had no power to discuss the resolution, as it was of a political nature and related to international affairs and it had nothing to do with civic duties. The Learned Single Judge issued a Writ restraining the Corporation from discussing the said resolution or passing the same. Before the Appeal Court it was urged that the Court could only interfere with an act of the Corporation and that until the resolution had been discussed and passed it could not be said that the Corporation had done any act, which it was not competent to do and which was ultra vires. In dealing with the arguments Chief Justice Chainani observed:

This Court can, however, grant any relief not only after damage has been done, but even there is a reasonable likelihood of damage being done. If therefore, I had come to the conclusion that the said resolution was beyond the powers of the Corporation I would have upheld the order passed by Mr. Justice Desai.

19. In the Allahabad case (Shashi Kant Rai Vs. Regional Transport Authority, Allahabad Region, Allahabad and Others,) the petitioner Sashi Kant Rai made an application before the Regional Transport Authority for stage carriage permit on the Varanasi-Jabalpur inter-State route with respect to which the permits were to expire shortly. It was alleged that the Secretary, Regional Transport Authority had not published the petitioner''s application and as such it could not be considered by the Regional Transport Authority along with Smt. Hurmazi Begum''s renewal application. It was further alleged that Smt. Hurmazi Begum was the mother-in-law

of Sri Muzaffar Husain, Transport Minister in the Government of Uttar Pradesh and as the Regional Transport Authority was directly under the control of the Transport Minister, the Transport Authority was bent upon renewing the permit of Smt. Hurmazi Begum. With that end in view, the authority was not allowing any other application including that of the petitioner. The petitioner moved an application under Article 226 of the Constitution praying for a Writ of Mandamus commanding the respondents to publish the petitioner''s application for stage carriage permit and considered it along with renewal application of Smt. Hurmazi Begum, the respondent No. 3. Mr. Justice Satish Chandra observed, "the petitioner''s apprehension that his application would not be considered along with the renewal application and that the third respondent''s application is likely to be granted and the petitioner''s application is summarily refused was well-founded. The petitioner''s action in approaching this court at this stage cannot be characterised as premature. He cannot be blamed for not letting grass grow under his feet by seeing the permit being renewed in favour of the third respondent and his application being summarily rejected, and then going up in appeal, before coming to this court".

20. In The Statesman Ltd. and Others Vs. The Fact Finding Committee and Others, the Government of India by a resolution decided to set up a Fact Finding Committee to enquire into the economic conditions of the newspaper industries. The Committee issued a questionnaire and required all newspapers including the Statesman to answer the same. The Statesman did not answer the questionnaire. It was contended by the petitioner that the Committee had no right, power, authority or jurisdiction under the Commission of Enquiry Act, 1952 to require the Statesman to answer any questionnaire or to furnish any figures or estimates or accounts. In that context Mr. Justice M. M. Dutt observed whether the petitioners were bound to answer the questionnaire or not was a matter which would be considered later, but at that stage it could not, but be held that there was a threat. Following the decisions of the Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , the learned Judge held that in order to maintain the application under Article 226 it was not necessary for the petitioner to show that he had already suffered an actual injury. Apprehension to the threat or injury was enough.

21. I have set out the relevant facts in all these cases referred to by Mr. Chatterji in order to show that in what context and under which circumstances the principle that Writ lies on apprehension or threat of an injury has been applied to by the Supreme Court as well as the High Courts. It is to be noticed that in all these cases some actions were taken by "the authorities which were found by the Courts to be illegal and without jurisdiction.

22. The ratio of the aforesaid decisions seems to be that, Writ lies on apprehension or threat of an injury if the Act by which an action in threatened to be taken is ultra vires; where the threatened action is sought to infringe the fundamental rights or any other rights of a citizen or where the threatened or apprehended action of the

executive is without any authority of law or patently illegal.

23. In Haradhan Saha Vs. The State of West Bengal and Others, , Chief Justice Ray said, "the power of preventive detention is a precautionary power exercised in reasonable anticipation. ****It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances."

24. In Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal, , the Supreme Court said, that the Act creates in the authorities concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission in future of acts prejudicial to the community in general. This jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences.

25. In Mohd. Salim Khan Vs. Shri C.C. Bose and Another, , in connection with the preventive detention the Supreme Court observed, "this is an instrument for protecting the community against specially injurious types of anti-social activity statutorily enunciated."

26. In Kanhaiyalal''s case (1976 (1) C.L.J. 293), the Division Bench of this Court also considered the decision of Bhailal Bhai''s case (Supra) and D.A.V. College v. State of Punjab, AIR 1971 S.C. 731, where the Supreme Court said that unless the petitioners make out a case that their fundamental rights are violated or threatened applications under Article 32 of the Constitution would not be maintainable. Mr. Justice S.K. Datta observed that the principles of law laid down in the above decisions appeared to be as follows : --

(a) The Court will grant proper relief by way of injunction or res training order whenever the fundamental rights or statutory or legal rights of persons are invaded or threatened.

(b) Before such relief is granted the Court must find or declare the existence of such right and such right is being illegally invaded or threatened.

27. Mr. Chatterji contends that assuming that the fundamental rights are suspended during the period of Emergency and the Act cannot be challenged on the ground of infringment of those rights, but even then, the Presidential order does not preclude the petitioner from contending that the condition precedent for passing the detention order u/s 3(1) of the Act has not been fulfilled or such order was passed malafide. A prima facie case has been made out by the petitioner in the petition that there could not have been any material before the detaining authority on the basis of which satisfaction as contemplated by section 3 of the Act could be reached. It is further contended that it is the established position in law that when a particular order is challenged, the authority making that order is required to disclose before the Court the basis upon which the said order was passed even in a case, where the

provisions in the Act do not require the authority to disclose the reasons for making that order to the person concerned.

28. Mr. Sen, who also appeared on behalf of Surana contends that inspite of Emergency or the Presidential order, the Rule of Law is not suspended. All executive actions depriving a person of his right to liberty must have an authority of law. According to Mr. Sen that authority of law does not only mean a law enacted by Parliament but it also includes a legal order under a Law.

29. Article 21 of the Constitution says that no person shall be deprived of his life or personal liberty except according to the procedure established by law. So, the first and essential step in a procedure established by law for depriviation of personal liberty must be a law made by a competent legislature authorising such depriviation. The law must satisfy two tests before it can be a valid law namely, (1) that the proper legislature has the competency to make the law and (2) that it does not take away or abridge any fundamental rights guaranteed in Part III of the Constitution. Under Article 248 of the Constitution Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent or State list. So it appears that Parliament is competent to enact COFEPOSA Act. The said Act has been placed in the Ninth Schedule. Accordingly any action taken under it cannot be challenged on the ground of infringement of fundamental rights. If any detention order is passed u/s 3 of the Act, it cannot be said that the executive is acting without any authority of law. Safeguards against detention and arrest have been provided under Article 22(5) of the Constitution. Sub-section (3) of Section 3 of the Act provides the period of time within which the grounds of order of detention has to be communicated for the purpose of clause 5 of Article 22. The basis of the detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detaining from doing the same. It is a "pre-cautionary power exercised in reasonable anticipation". So, in anticipation of an order of detention no anticipatory writ lies. The petitioner''s legal right might be infringed only where the detention order is passed illegally or malafide. "Where no challenge could be thrown on the Act itself that it is ultra vires, in the present case that cannot be done, in my opinion, the principle that for mere apprehension of any injury, the person is entitled to rush to the writ court for enforcement of his right would not be applicable in cases of an apprehension of an order of preventive detention. If on mere apprehension writs as well as injunctions are available, in that case the whole purpose of the law of preventive detention becomes meaningless and nugatory. If a person is detained under any order of preventive detention, his remedy lies to file an application for Habeas Corpus challenging the validity of the order of detention. In the instant case, no detention order has yet been passed. So the question of malafide, non-application of mind and all other pleas could not be urged by the petitioner at this stage. He is entitled to raise all the pleas when the detention order along with the grounds would be served and communicated to him. It is impossible for a court

to consider the validity or legality of any order which is not in existence.

30. The provisions have been made in the Act itself when the grounds of detention would be communicated to the detenu. The court cannot compel the detaining authority to produce the grounds before the period prescribed in the statute for the purpose of finding out whether the grounds are relevant or germane to the excercise of powers u/s 3 of the Act.

31. The grounds are the conclusion drawn from the facts and not a complete recitals of the facts. The grounds would show in which of the categories of prejudicial acts the suspected activities of the detained person were considered to fall. The grounds are different from the facts on which the satisfaction of the Government was based. When an order of detention in challenged in a Habeas Corpus petition, the burden is on the State to satisfy the court that the detention order has been validly made. The satisfaction of the detaining authority must be based on some grounds. There could be no satisfaction if there are no grounds for the same. Where an order of detention is passed and if it is challenged that there was no ground upon which the detaining authority formed its subjective satisfaction, in that case the detaining authority is required to produce before the court the grounds of detention and the facts relating thereto. The court can examine those materials to find out whether an honest or prudent person could form his satisfaction on such grounds although the sufficiency of the grounds cannot be gone into by the court. A subjective decision of the detaining authority cannot be substituted by an objective test in a court of law.

32. It is urged by Mr. Sen that even in a case where no order of detention has been served on the detenu he can come to the court and contend that he does not know the basis of his detention order. In such a case the burden is upon the authority to produce the detention order before the court and to point out under which provisions of law the person is detained. Reliance is placed upon the decision of the Bombay High Court in Krishna Madhaorao Ghatate and Another Vs. The Union of India and Others, .

33. In Ghatate''s case a Habeas Corpus application was filed on behalf of the petitioner. In that context the learned judges have observed that if any person is detained without any order of detention is served upon him in that case the burden is on the detaining authority to satisfy the court that under which law or under what authority a person is detained. In my view, that decision has got no application to the facts and circumstances of the present case. Questions of malafide, non-application, of mind, absence of grounds, lack of subjective satisfaction of the detaining authority can be urged after the detention order along with the grounds is communicated to or served upon the petitioner. The court cannot presume that an invalid or malafide order of detention would be passed by the detaining authority.

34. In Haji Ibrahim Vs. The State of Madhya Pradesh and Another, a Division Bench of the Madhya Pradesh High Court held that for the purpose of challenging the

validity of the order of detention on the ground that it was not a lawful order under the Act the pleas open to petitioner were as follows : --

(a) The order of detention is not passed by the authority competent to act under the Act.

(b) The order of detention has been passed mechanically without application of mind or is malafide.

(c) The grounds on which the order of detention is made, are not relevant or germane to the exercise of the power u/s 3 of the Act.

(d) The operative provisions of law under which he is detained suffers from the vice of excessive delegation.

35. Lastly it is argued that the detention order should be suspended on conditions as has been done by a Division Bench of this Court in Bisandeo Sharma v. State of West Bengal 1975 (2) C.L.J. 359.

36. In Bisandeo''s case the petitioner moved an application under Article 226 of the Constitution praying for a Writ, of Mandamus commanding the respondents to cancel or rescind the impugned order of detention dated 5th of October, 1971 which has been annexed to the petition as Annexure ''G''. The learned Trial Judge issued the Rule but refused to grant any ad interim injunction. The petitioner preferred an appeal. The Appeal Court found that the detention order was based on five grounds. With regard to three of the grounds, criminal cases had been launched against the accused and those cases were pending. With respect to two other grounds, there were criminal cases but the appellant was not an accused. In view of the decision of the Supreme Court in Mintu Bhakta Vs. The State of West Bengal, wherein it has been sated that one of the grounds for detention being factually baseless the whole order must fail, because it was impossible to predicate upon which of the grounds the detaining authority had reached its satisfaction or whether it reached satisfaction irrespective of or without the ground which failed. Accordingly, the Appeal Court allowed the appeal on condition that the appellant shall deposit with the Registrar, Appellant Side of this Court a sum of Rs. 25,000/-or furnish a bank guarantee for the said sum to the Registrar within a week from the date of the order; he will report to the Officer-in-charge of Kharagpur Police Station twice a week and he shall not leave Kharagpur town without informing the Officer-in-Charge of Kharagpur Police Station. It appears that although the order of detention along with the grounds could not be served upon the appellant because he was arrested in a criminal case and detained in jail custody, his wife however secured the older of detention along with the grounds and that grounds had been annexed to the petition. Considering those grounds the Appeal Court came to the conclusion that the appellant made out a prima facie case for setting aside the detention order and for that reason a conditional interim order was granted. In my opinion, Bisandeo''s case is an exceptional case and the facts and circumstances of

the said case are entirely different. The said decision, in my opinion, has got no application to the facts and circumstances of the present case. Moreover, the question of suspension of detention order does not arise in the present case.

37. My attention was also drawn to a Single Bench decision of this court in Jagadish Ch. Agarwal Vs. Union of India (UOI) and Others, and it was urged that the present Rule and the application should be adjourned sine die in view of the Proclamation of Emergency.

38. In Jagadish Ch. Agarwal Vs. Union of India (UOI) and Others, a notice was issued u/s 269(1) of the income tax Act, 1961 in respect of a property purchased by the petitioner. Being aggrieved, the petitioner moved this court under Article 226 of the Constitution and obtained a Rule Nisi. The petitioner in his grounds challenging the notice contends that section 269-C-I and R are ultra vires Articles 19(1) (f), 14 and 31. In view of the proclamation issued by the President under Article 359 Clause I of the Constitution, the right of any person to move any court for enforcement of the rights conferred by Articles 14, 21 and 22 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the Proclamation of Emergency made under clause I of Article 352 of the Constitution.

39. As the enforcement of right conferred by Article 14 of the Constitution was involved in that case, in view of the aforesaid Proclamation of Emergency, the matter was adjourned sine die by the Court with liberty to mention. In my opinion, that decision is of no assistance to the petitioner.

40. Considering the facts and circumstances of this case, in my opinion, no relief can be granted to the petitioner in the present case. Accordingly, this Rule is discharged. All interim orders are vacated. In view of above, no separate order is passed on the application for vacating the interim order of injunction.

There will be no order for costs.

Let the operation of the order be stayed for a period of two weeks from date.