CASE NO.:
Appeal (civil) 5943-5945 of 1997

PETITIONER:
Dr. Karan Singh

RESPONDENT:
State of Jammu & Kashmir & Anr.

DATE OF JUDGMENT: 13/04/2004

BENCH:
Y.K. Sabharwal & Dr.AR.Lakshmanan.

JUDGMENT:
J U D G M E N T

Y.K.Sabharwal, J.

The main issue to be determined in these appeals is whether 563 articles lying in 'Toshakhana' (Treasury of the State of Jammu & Kashmir) can be declared as the private property of the appellant or this issue deserves fresh determination by Government of India or it be referred to arbitration for adjudication. The background under which the issue has come up for consideration may first be noticed.

The appellant is son of Maharaja Hari Singh, ex-ruler of Jammu and Kashmir. An instrument of accession of Jammu and Kashmir was executed by Maharaja Hari Singh on 26th October, 1947. The articles in question comprising of jewellery and gold articles etc. were transferred from Toshakhana at Jammu to Toshakhana at Srinagar on 17th September, 1951. Maharaja Hari Singh died on 26th April, 1961. During his lifetime, Maharaja Hari Singh did not claim the articles in question as private property. The Government of India, in pursuance of clause (22) of Article 366 of the Constitution of India, recognized appellant as a successor to late Maharaja Sir Hari Singh w.e.f. 26th April, 1961. By Constitution (Twenty-Sixth Amendment) Act, 1971, rulership was abolished w.e.f. 28th December, 1971. The abolition, however, did not affect the ownership of the rulers of their private property as distinct from State property.
The appellant made a representation dated 2nd December, 1983 to the Ministry of Home Affairs claiming that the articles lying in the Toshakhana, Srinagar, i.e., the heirlooms , wearing apparel , gold and silver utensils and cutlery, furniture, fixtures and carpets etc. are the property of the ruler family of Jammu and Kashmir coming from generation to generation since the inception of the rulership and are his personal property. The Ministry was requested to issue immediate instructions to the State Government for handing over all the articles to the appellant.

In February 1984, a writ petition was filed in Jammu and Kashmir High Court, inter alia, praying for issue of directions to the Union of India, Ministry of Home Affairs to decide and adjudicate upon the representation dated 2nd December, 1983. During the pendency of the writ petition, the representation of the appellant was rejected by the Union of India on 24th September, 1984. In its communication dated 24th September, 1984 sent to the appellant, the Union of India, inter alia, noticed that in response to Government's letter dated 18th May, 1949, Maharaja Hari Singh in his letter dated 1st June, 1949 addressed to late Sardar Vallabh Bhai Patel, the then Minister of Home Affairs, had sent a list of his private properties. There is no mention of jewellery or regalia in question in the said list. The said list of private properties given by the Maharaja Hari Singh was accepted by the Government of India and duly communicated by letter dated 9th June, 1949 to Maharaja Hari Singh. It was also stated that "it may incidentally be pointed out that in your autobiography entitled 'Heir Apparent' and statements to the Press, you have acknowledged that the treasure lying in the Toshakhana had

been given to the State".

In the writ petition, the High Court rejected the application of the appellant for inspection of the articles. The boxes of jewellery were, however, ordered to be sealed by order dated 20th July, 1985. This Court, on the appeal of the appellant, setting aside the order of the High Court, directed opening of those boxes for the purpose of inspection by the Member, Central Board of Direct Taxes who was to be accompanied by Director General of Archaelogical Survey of India, Director Antiques, Director, National Museum and approved valuers of jewellery for determining the true nature and character of the same and whether any and, if so, what items constitute heirlooms articles of personal use of the appellant and his family. The inspection was directed to be taken in the presence of the appellant's representative as also a representative of the State Government (See Dr. Karan Singh v. State of Jammu & Kashmir & Anr. [(1986) 1 SCC 541]. In terms of this decision, the inspection was carried out and report submitted to the High Court.

The appellant amended the writ petition and sought quashing of the Government's decision as contained in the communication dated 24th September, 1984. Since the Government had also rejected the application of the appellant seeking review of its decision dated 24th September, 1984, the appellant also sought quashing of the rejection of his review application dated 9th October, 1984. Further, a declaration was sought that the heirlooms in the custody of Toshakhana, Srinagar (563 items) are the personal properties of the appellant.

The writ petition was partly allowed by a learned Single Judge of the High Court. The appellant was declared rightful owner of 'heirlooms' consisting of 42 items of jewellery mentioned in appendix 'C' to the report of the Inspection Committee appointed by this Court. The State Government was directed to deliver possession thereof to the appellant. The orders of the Government of India, rejecting the representation and declining to review the said order were quashed. The Government of India was directed to reconsider the appellant's representation after giving a proper opportunity of being heard to all the parties involved in the matter with regard to the claim of the items of jewellery mentioned in appendix 'A' and 'B' to the report of the Inspection Committee above referred.

The judgment of learned Single Judge was challenged by the appellant, the State Government and the Union of India by each filing Letters Patent Appeal, the appellant claiming that all the articles ought to have been declared as his private property and the State Government and Union of India claiming that the writ petition should have been dismissed by the learned Single Judge.

By the impugned judgment, all the three Letters Patent Appeals have been decided. The Division Bench has held that the appellant has not put forward any claim much less such claim having been recognized by the Union of India for 30 years and all those years the appellant did not raise his little finger in respect of these movables. The Division Bench came to the conclusion that looking to the nature and circumstances and the conduct of the appellant, it is evident that till 1983, no attempt whatsoever was made, either by the ex-ruler or by the appellant, to claim these properties as private properties. The Division Bench held that either there was relinquishment of right or waiver voluntarily. The finding of learned Single Judge in respect of 42 items was reversed. The Division Bench further held that regard being had to the provisions of Article 363 of the Constitution of India, any claim arising out of such dispute by the ex-ruler cannot be granted by a court of law for the purpose of giving relief. The Division Bench has concluded that the appellant has failed to make a case establishing his right over the valuable moveables. Resultantly, the appeal filed by the appellant has been dismissed and appeals filed by the State and the Union of India have been allowed.

Mr. Kapil Sibal, learned senior counsel appearing for the appellant contends that the Division Bench is in error in coming to the conclusion that the appellant has abandoned, relinquished or waived his right and in dismissing the writ petition. On the other hand, supporting the impugned judgment Mr. Raju Ramachandran, learned Additional Solicitor General appearing for Union of India and Mr. Altaf H. Naiyak, learned Advocate General of the State contend that the writ petition was not maintainable in view of bar contained in Article 363 of the Constitution of India and, even otherwise, the appellant had no right to reopen the issue after lapse of 30 years besides there being highly disputed questions of fact.

At the outset, we may note that there has never been any declaration that the articles in question were private properties of Maharaja Hari Singh or that of the appellant.

With the aforesaid factual backdrop, the questions that arise for

consideration are :
1. Bar of Article 363 of the Constitution of India to the maintainability of the writ petition;
2. Whether the appellant is disentitled to relief on applicability of the doctrine of estoppel, abandonment and waiver;
3. Whether the decision of the Government of India rejecting the representation deserves to be quashed and declaration granted that the articles are private property of the appellant or the issue either deserves to be remitted to Government of India for reconsideration or referred for adjudication to an arbitrator to be appointed by this Court.

Question No.1: Bar of Article 363 of the Constitution:

The contention urged on behalf of the respondents is that the issue whether the articles are private or State property arises out of document of accession entered into by Late Maharaja Hari Singh with the Government of the Dominion of India and, therefore, the jurisdiction of the courts is barred.

Article 363 of the Constitution which bars interference by courts in disputes arising out of certain treaties, agreements etc. reads as under:-

"(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article \026

(a) "Indian State" means any territory recognized before the commencement of this Constitution by his Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognized before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

Interpreting the aforesaid Article in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior etc. v. Union of India & Anr. [(1971) 1 SCC 85], this Court held:

".....But the Constituent Assembly did not want to open up the Pandora's box. With Article 363, Article 362 would have opened the floodgates of litigation. The Constituent Assembly evidently wanted to avoid that situation. That appears to have been the main reason for enacting Article 363..... Some of the Rulers who had entered into Merger Agreements were challenging the validity of those agreements, even before the draft of the Constitution was finalized. Some of them were contending that the agreements were taken from them by intimidation; some others were contending that there were blanks in the agreements signed by them and those blanks had been filled in without their knowledge and to their prejudice. The merger process went on hurriedly. The Constitution-makers could not have ignored the possibility of future challenge to the validity of the Merger Agreements. Naturally they would have been anxious to avoid challenge to various provisions in the

Constitution which are directly linked with the Merger Agreements."

It was further observed:

"That is why Article 363 really embodied the principles of Acts of State which regulated and guided the rights and obligations under the covenants or Merger Agreements by incorporating the doctrine of unenforceability of covenants or Merger Agreements coming into existence as Acts of State."

In Colonel His Highness Sawai Tej Singhji of Alwar v. Union of India & Anr. [(1979) 1 SCC 512], this Court held that:

"Another contention raised by Mr. Sharma was that even if the letter dated September 14, 1949 was held to evidence an agreement, it was not hit by the provisions of Article 363 of the Constitution inasmuch as it was an agreement resulting from the Rajasthan Covenant which alone, according to him, was the agreement covered by the article. This contention is also without substance. Article 363 of the Constitution bars the jurisdiction of all courts in any disputes arising out of any agreement which was entered into or executed before the commencement of the Constitution by any ruler of an Indian State to which the Government of India was a party. The operation of the article is not limited to any "Parent" covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement would fall within the ambit of the article. Thus the fact that the agreement contained in the letter dated September 14, 1949 had resulted from action taken under the provisions of the Rajasthan Covenant, is no answer to the plea raised on behalf of the respondents that Article 363 of the Constitution is a bar to the maintainability of the two suits, although we may add, that the agreement did not flow directly from the Rajasthan Covenant but was entered into by ignoring and departing from the provisions of clause (2) of Article XII thereof."

Again in Union of India v. Prince Muffakam Jah & Ors.(II) [1995 Supp. (1) SCC 702], while giving reasons for rejection of intervention application that had been filed by the interveners claiming to be public-spirited citizens and urging that there was a clear conceptual division between the Nizam's personal and private property and the State property, it was held:

"Article 363 bars the jurisdiction of all the courts in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State."

At this stage it would be apposite to notice the decision of this Court in Kunwar Shri Vir Rajendra Singh v. Union of India & Ors. [(1970) 2 SCR 631], where while considering the contention urged on behalf of the petitioner that by the executive order private properties were handed over to the Ruler, reproducing the concerned notification of Government of India, this Court held that :

"It is apparent that there is no notification by virtue of which the Ruler became entitled to private properties. The notification which recognized the Ruler did not state that the Ruler thereby became entitled to private properties of the late Ruler. Mr. Attorney-General appearing for 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 invaded. 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 effected 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 realized the effect of Article 291 and did not press the contention of privy purse being a private property."

Thus, it is evident that any right arising out of or relating to a treaty covenant, agreement etc. as mentioned in Article 363, is barred to be determined by any court. The correspondence exchanged between Maharaja Hari Singh and the Government of India would amount to 'agreement' within the meaning of Article 363. In case, the conclusion reached is that the same also covers the articles in question, the bar of Article 363 would clearly be attracted. But if this Court comes to the conclusion that these articles are not covered by the said correspondence, Article 363 would be inapplicable. According to the appellant, there is no document whereunder the question as to these articles came to be considered by the Government. According to the Government, the correspondence of 1949 and letter dated 24th December, 1952 decides the aspect of private properties. This factual aspect has been considered while examining other questions.

Question No.2 : Re: Applicability of doctrine of estoppel, waiver or abandonment

The Division Bench in the impugned judgment, as earlier noticed, has held that 'either there was relinquishment of right or waiver voluntarily'. Before we examine the facts to decide this issue, reference may be made to certain decisions on the aspect of estoppel, abandonment and waiver. The leading case on estoppel is that of Pickard v. Sears [6 AD & E469] wherein Lord Denman, C.J. in delivering judgment, inter alia, said :

"His title having been once established, the property could only be divested by gift or sale; of which no specific act was even surmised. But the rule of law is clear that where one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so

as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;...." (See : Bigelow on Estoppel, pp.606, 607)

In Mitra Sen Singh & Ors. v. Mt. Janki Kuar & Ors. [AIR 1924 PC 213 at 214], with regard to estoppel, it was stated :

"There is no peculiarity in the law of India as distinguished from that of England which would justify such an application. The law of India is compendiously set forth in S.115 of the Indian Evidence Act, Act 1 of 1872. It will save a long statement by simply stating that section, which is as follows :

'When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing'."

In Dhiyan Singh & Anr. v. Jugal Kishore & Anr. [1952 SCR 478] this Court stated :

"Now it can be conceded that the before an estoppel can arise, there must be first a representation of an existing fact as distinct from a mere promise de futuro made by one party to the other; second that the other party, believing it, must have been induced to act on the faith of it; and third, that he must have so acted to his detriment."

In Gyarsi Bai & Ors. v. Dhansukh Lal & Ors. [(1965) 2 SCR 154], the principles were reiterated in the following words:

"To invoke the doctrine of estoppel three conditions must be satisfied : (1) representation by a person to another, (2) the other shall have acted upon the said representation, and (3) such action shall have been detrimental to the interests of the person to whom the representation has been made."

Abandonment

In Sha Mulchand & Co. Ltd. (in liquidation) v. Jawahar Mills Ltd. [(1953) SCR 351], this Court stated :

"Two things are thus clear, namely, (1) that abandonment of right is much more than mere waiver, acquiescence or laches and is something akin to estoppel if not estoppel itself, and (2) that mere waiver, acquiescence or laches which is short of abandonment of right or estoppel does not disentitle the holder of shares who has a vested interest in the shares from challenging the validity of the purported forfeiture of those shares."

In the same decision the Supreme Court also made it clear that

"A man who has a vested interest and in whom the

legal title lies does not, and cannot, lose that title by mere laches, or mere standing by or even by saying that he has abandoned his right, unless there is something more, namely inducing another party by his words of conduct to believe the truth of that statement and to act upon it to his detriment, that is to say, unless there is an estoppel, pure and simple. It is only in such a case that the right can by lost by what is loosely called abandonment or waiver, but even then it is not the abandonment or waiver as such which deprives him of his title but the estoppel which prevents him from asserting that his interest in the shares has not been legally extinguished, that is to say, which prevents him from asserting that the legal forms which in law bring about the extinguishment of his interest and pass the title which resides in him to another, were not duly observed."

Waiver

In Municipal Corporation of Greater Bombay v. Dr.Hakimwadi Tenants' Association & Ors. [1988 Supp. SCC 55], it was held "In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined the facts of each case."

For the purpose of the present case, the principles laid down in Provash Chandra Dalui & Anr. v. Biswanath Banerjee & Anr. [1989 Supp.(1) SCC 487] are quite apt. One of the questions that came up for consideration in the said decision was whether there was estoppel, waiver, acquiescence or res judicata on the part of the respondents as in earlier proceedings they treated the appellants as thika tenants before the Controller. It was held that 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 forsaking the assertion of a right to the proper opportunity. It was held that 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.

On the touchstone of aforesaid principles, we have to examine facts of the case in hand to decide whether the right was forsaken. We have to decide whether there existed an opportunity to Maharaja Hari Singh and/or the appellant to assert the right but it was not asserted at the appropriate time when there was a proper opportunity. According to the appellant, the proper opportunity arose only in the year 1983 when the newspapers reports appeared showing the intention of the State Government to sell these articles. The appellant did not forsake the assertion of his right at that time. In fact, he immediately asserted his right by filing a representation and without even awaiting the decision of the representation by the Government, he filed the writ petition before the High Court. In our view, however, it is over simplification of the facts and background of the case. The claim of the appellant loses sight of the following facts :

1. The correspondence exchanged between the Government of India and Maharaja Hari Singh shows that articles in question were not claimed by the ex-ruler to be his private property.
2. Maharaha Hari Singh, in his lifetime, did not claim the articles in question to be his personal properties.
3. The appellant was recognized as the successor to Maharaja Hari Singh on his demise in the year 1961. No claim was made till representation dated 2nd December, 1983.
4. Section 5(1)(ivx) of the Wealth Tax Act provides for exemption from

wealth tax in respect of jewellery and other heirlooms in possession of the ruler. The exemption was available only where
(a) the ruler's jewellery had been recognized by the Central Government as his heirloom before the commencement of the Wealth Tax Act; or
(b) The Central Board of Direct Taxes recognized the ruler's jewellery as his heirloom at the time of his first assessment to wealth tax under the Wealth Tax Act.

The appellant did not make any application to the Central Board of Direct Taxes to obtain such recognition nor Central Government had recognized the said articles as heirlooms of the appellant, as required for the purpose of exemption from wealth tax. The appellant filed an application claiming exemption under Section 5(1)(ivx) of the Wealth Tax Act in respect of the articles in question only on 7th February, 1985, after filing of the writ petition in the High Court.

5. The appellant in his biography entitled "Heir Apparent" has made a statement to the following effect :

"Again unlike most of other Rulers, my father made a clear distinction between his private property, including jewellery and State property. He left family jewellery, shawls, carpets and Regalia worth crores with the State Toshakhana (Treasury) which most others in his place would have appropriated without turning a hair."

In respect of the aforesaid statement, learned counsel for the appellant, referring to Sections 17 and 31 of the Indian Evidence Act and certain decisions, contends that there is no admission abandoning the articles in favour of the State Government and also that it is open to the appellant to explain the circumstances under which the same were made.

Reliance has been placed on Shri Kishori Lal v. Mst. Chaltibai. [1959 Supp.(1) SCR 698] where dealing with admissions, this Court stated thus :

"And admissions are not conclusive, and unless they constitute estoppel, the maker is at liberty to prove that they were mistaken or were untrue : Trinidad Asphalt Company v. Coryat [(1896) A.C. 587]. Admissions are mere pieces of evidence and if the truth of the matter is known to both parties the principle stated in Chandra Kunwar's case [(1906) 34 I.A. 27] would be inapplicable."

Again in Bharat Singh & Anr. v. Bhagirathi [(1966) 1 SCR 606], on which reliance was placed by learned counsel for the appellant, this Court held :

"Admissions have to be clear if they are to be used against the person making them. Admissions are subjective evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted."

Further reliance was placed on Chikkam Koreswara Rao v. Chikkam Subba Rao & Ors. [(1970) 1 SCC 558] for the observations to the following effect:

"Before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive. There should be no doubt or ambiguity about the alleged admissions."

In the present case, the reliance on aforesaid decisions is as misplaced as the argument itself. It has to be borne in mind that the statements made in the book are not being taken into consideration as conclusive admissions as such but have been taken as additional circumstance along with other circumstances that have already been noticed, for determining whether the conduct of the appellant amounts to waiver and/or abandonment of right in respect of the articles in question. The appellant has not been declined relief only on account of the

statements made by him in the autobiography. It may also be noticed that the material on record further shows that the appellant has been taking from State Government on temporary loan certain items from Toshakhana by moving applications from time to time for the said purpose. This conduct of the appellant is also a relevant circumstance. It is evident that the appellant came out of slumber only in the year 1983 and took a chance in respect of the articles in question. Though on the aforesaid facts, the doctrine of estoppel may not be applicable against the appellant for want of three conditions as laid down in Gyarsi Bai (supra) but the same cannot be said about abandonment and waiver. It is not a mere case of latches and standing by the appellant. Firstly the father of the appellant never claimed the articles to be his private property. After his death for twenty years the appellant did not take any action. On the other hand he was occasionally taking articles on loan from Toshakhana. The appellant failed to assert his right at proper opportunity. Having regard to these facts, the conclusion of the Division Bench that the appellant has waived and/or abandoned his right in respect of the articles in question cannot be faulted.

Question No.3: Whether the decision of the Government of India rejecting the representation deserves to be quashed and declaration granted that the articles are private property of the appellant or the issue either deserves to be remitted to Government of India for reconsideration or referred for adjudication to an arbitrator to be appointed by this Court.

The relevant part of order dated 24th September, 1984 passed by the Government of India rejecting appellant's representation reads as under:

"2. The relevant facts appear to be that in response to Government of India's letter of 18.5.1949, the then Maharaja of Kashmir in his letter dated 1.6.1949 addressed to late Sardar Vallabhbhai Patel, the then Minister of Home Affairs and States, had sent a list of his private properties. There is no mention of jewellery or regalia in question in the said list. The aforesaid list of private properties given by the then Maharaja of Kashmir was accepted by the Government of India and the acceptance was duly communicated by letter dated 9th June, 1948 by late Sardar Patel.

3. Later, Shri C.S.Venkatachar, the then Secretary, Ministry of States, in his letter dated December 24, 1952 addressed to Maharaja Hari Singh, referred to Sardar Patel's aforesaid letter of June 9, 1949 and reiterated that the properties mentioned in the Schedule to Maharaja's letter were the private properties of the Maharaja and would continue to be his private properties. There is no mention of jewellery or regalia in question in the said Schedule.

4. On 18th August, 1958, a Notification was issued by the Ministry of Finance (Department of Revenue) with regard to exemption of heirloom jewellery from wealth tax. According to this Notification, the then rulers were required to obtain recognition of jewellery as their heirloom, if any, for purposes of exemption from the Wealth Tax Act, 1957. The declaration was given in 26 cases by the then Rulers and the jewellery was exempted from wealth tax subject to certain conditions laid down in the Wealth Tax (Exemption of Heirloom Jewellery of Rules) Rules, 1958. The Ruler of Jammu and Kashmir, however, does not appear to have made any application under Rule 3 of these Rules for recognition of jewellery in question as heirloom.

5. Consequent upon the enforcement of the Constitution (Twenty-sixth Amendment) Act, 1971 with effect from 28th December, 1971, the rulership was abolished. The question of the jewellery etc. being required for ceremonial purposes thereafter

cannot arise. Para 8 of Shri C.S. Venkatachar's letter dated December 24, 1952 reproduced in your letter does not relate to the jewellery in question and is of no relevance now.

6. The agreements with regard to the private properties of the Rulers, once arrived at, are final.

7. It may incidentally be pointed out that in your autobiography entitled 'Heir Apparent' and statements to the Press, you have acknowledged that the treasure lying in the Toshakhana had been given to the State.

8. Taking all aspects into consideration, the Government of India regret their inability to accept your claim to the jewelry and other items lying in Srinagar Toshakhana."

As already noticed there has never been any declaration that the articles in question are private properties of the appellant or his father. The correspondence between Maharaja Hari Singh and the Government does not declare these articles as private property of Maharaja though some other properties were so declared. Assuming there is some substance in the claim of the appellant which requires consideration, then it will depend upon examination of various disputed question of facts. Such disputed questions cannot be adjudicated except on taking of evidence. In Dharam Dutt & Ors. v. Union of India & Ors. [2003 (10) SCALE 141], a case of taking over of Sapru House by promulgation of ordinance followed by the Act, the contention of the writ petitioners was that the building, the library and all other movables in the Sapru House are owned by the Society and take over by the Government has deprived the Society of its property without any authority of law. This Court noticing that Union of India do not admit title of the petitioner and also noticing that there is not one document of title produced by the petitioners, held that such highly disputed questions of fact which cannot be determined except on evidence are not fit to be taken up for adjudication in the exercise of writ jurisdiction. We see no illegality in the decision of the Government that was approached by the appellant himself. Therefore, it is not possible to quash the order dated 24th September, 1984 and direct reconsideration of the issue by the Government. Realising difficulties in grant of relief in respect of declaration of articles to be private property of the appellant, Mr. Kapil Sibal did not seriously press it but at the same time strenuously contended that it was amply fit case where the issue deserves to be referred for adjudication to the arbitration of an independent arbitrator. In support, reference has been made by learned counsel to the report of the inspection team constituted by this Court as noticed hereinbefore. The contention urged is that the said report at least prima facie shows that these articles are private property of the appellant and, therefore, an independent adjudication is called for. The inspection team was constituted and inspection ordered as interim measure when the writ petition was pending before the High Court. The report only gives a tentative opinion. It says that the matter may have to be decided on taking evidence. The prima facie opinion expressed in the report is not a ground to refer the issue to arbitration for adjudication in the absence of any agreement requiring reference to arbitration. Further there is no such claim in the writ petition. Assuming that in an appropriate case relief may be moulded by this Court and matter referred for adjudication to arbitration in exercise of powers of this Court under Article 142 of the Constitution of India, we see no ground, on the facts of the present case, to exercise such power. The decision in respect of private property taken long time back cannot be permitted to be reopened without any exceptional grounds which are none in the present case.

For the aforesaid reasons, we are of the view that no interference is called for in the impugned judgment of the High Court. The appeals are accordingly dismissed, however, leaving the parties to bear their own costs.