REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6619 OF 2014

UNION OF INDIA & ANR .....APPELLANT(S)

VERSUS

ONKAR NATH DHAR .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The order passed by the learned Division Bench of the High Court of Punjab & Haryana on 07.07.2011 is the subject matter of challenge in the present appeal. The learned Single Bench has allowed the writ petition of a Kashmiri migrant, the respondent[1] who shifted to Jammu in the year 1989 or so. He was transferred to the office of the Intelligence Bureau in Delhi. Later he was transferred to Faridabad where he has been allotted a government accommodation. The respondent attained the age of superannuation from service on 31.10.2006.

1 Onkar Nath Dhar, in short 'Dhar'

2. The respondent gave representation to the appellant to allow him to retain the government accommodation, which was allowed and Dhar was allowed to retain house for another one year. Dhar submitted another representation on 18.6.2007 to allow him to retain house allotted to him on a nominal licence fee till the circumstances prevailing in Jammu & Kashmir improve and the Government makes it possible for him to return to his native place.

3. Dhar was served with a notice under the Public Premises (Eviction of Unauthorised Occupant) Act, 1971[2]. An order for eviction against Dhar was passed but was stayed by the learned Additional District Judge, Delhi. An objection was raised of territorial jurisdiction of the Delhi Court. Dhar withdrew his appeal and filed it in the Court of learned Additional District Judge, Faridabad which was dismissed on 19.08.2009. Such orders were the subject matter of challenge before the learned High Court of Punjab & Haryana in the civil writ petition, which was allowed on 24.10.2010.

4. The learned Single Bench relied upon an order passed by this Court in ***J.L. Koul*** v. ***State of J & K***[3]. It was held, that it is not possible for Dhar to return to his own State and that due to which order of eviction shall be kept in abeyance, although the appellants are at liberty to provide alternative accommodation to Dhar on nominal licence fee in Farid-

2 For short, the 'Act'
3 (2010) 1 SCC 371

abad. The same was affirmed by the learned Division Bench of High Court of Punjab & Haryana.

5. ***J.L. Koul*** was a case arising out of residential accommodation allotted to the appellant who was a government servant at Jammu in the year 1989-90. The appellant therein was permitted to retain the house allotted at Jammu for safety reasons. In terms of the interim order passed by the Court, the Chief Secretary of the State had filed an affidavit on 06.10.2009 and disclosed that out of 54 appellants who were in Court, 23 had already vacated government accommodation and the same had been allotted to the government employees whereas 31 migrants are still occupying the government accommodation. 37,280 families have been registered for the relief including the accommodation and only 5,000 families have been provided with the accommodation. The affidavit stipulates providing transit accommodation and alternatively Rupees One Lakh per family towards rental and incidental expenses to those who were not able to be accommodated in the transit accommodation. The relevant clause is as under:

> "(b) Transit Accommodation: Construction of transit accommodation at three sites @ Rs.20.00 crore each for total Rs. 60.00 crore. Alternatively, Rs. 1.00 lac per family towards rental and incidental expenses to those families who may not be accommodated in transit accommodation."

6. This Court passed an order in ***J.L. Koul*** that no further action is required, wherein it was held as under:

> "8. The aforesaid affidavit makes it clear that the State Authorities have framed the rehabilitation scheme and for implementation of the same, it got the resources also. In such a fact situation no further action/direction is required.
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> 9. In view of the above affidavit/undertaking given by the State and after hearing Mrs. Purnima Bhat Kak, Ld. Counsel for the appellants and Mr. Anis Suhrawardy, Ld. Counsel for the State, we dispose of the appeal with a pious hope that State shall take all endeavours to rehabilitate the persons who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellants-retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date."

7. Learned counsel for the appellant refers to the judgment of this Court reported as ***Lok Prahari (I)*** v. ***State of Uttar Pradesh & Ors.***[4] wherein the executive instructions termed as Ex-Chief Ministers Residence Allotment Rules, 1997 were found to be illegal and ***Lok Prahari (II)*** v. ***State of Uttar Pradesh & Ors.***[5] wherein an Act enacted by the Uttar Pradesh Government regularising the allotment of the Government houses to the Ex-Chief Ministers was set aside. Reference was also made to judgments of this Court reported as ***S.D. Bandi*** v. ***Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors.***[6] and ***Shiv Sagar Tiwari*** v. ***Union of India & Ors.***[7]

8. Mr. Handoo, the learned counsel for the respondent referred to a judgment by learned Division Bench of High Court of Delhi reported as

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4 (2016) 8 SCC 389
5 (2018) 6 SCC 1
6 (2013) 12 SCC 631
7 (1997) 1 SCC 444

Union of India & Ors. v. ***Vijay Mam***[8]. The order of the learned Single Bench which was the subject matter of appeal in which it was *inter alia* ordered that Union shall provide alternative accommodation to the petitioner and his or her family anywhere in Delhi but can be even in NCR region, subject to payment of normal license fee. The learned Division Bench was hearing appeals of Union directed against 24 occupants including one, a former Director-General of Border Security Force. The Court referred to Section 2(1)(d) of the Protection of Human Rights Act, 1993 as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Reference was made to the report of May, 2008 prepared by UN Committee on Economic, Social and Cultural Rights, *inter alia*, reporting that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Principle 7, *inter alia*, provides that the authorities shall ensure that proper accommodation is provided to displaced persons. The Court also referred to the judgment in ***J.L. Koul*** as a binding precedent. The learned Delhi High Court, *inter alia*, held as under:

> "16. No doubt the matter raises certain fundamental issues. It is a mix of constitutional rights of the respondents on the one hand and the right of the Government to claim back the possession of the accommodation after their retirement. It is also necessary to make a preliminary remark

8 2012 SCC OnLine Del 3218

that the issue has arisen in exceptional circumstances and exceptional circumstances call for exceptional remedies. The underlined objective has to be to dispense justice, of course, justice in accordance with law, but at the same time justice pragmatic with mercy and compassion, wherever it is possible within the parameters of law and without doing violence to the legal principles.

17. The simplistic overtures, as perceived by the appellants taking it to be simple cases under PP Act, has to be denounced. The Court cannot countenance trivialization of the issue as sought to be projected. This matter definitely has strong hue of human rights. The approach of learned Single Judge in examining the matter from that angle is definitely reasonable, just and proper. The said approach is adopted with the purpose of doing justice in the broader sense of the matter keeping aside the narrow and pedantic approach. Situations may arise when, to do complete justice in the matter, courts have to ignore the technicalities of law.

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31. We also make it clear that the Central Government would be free to frame a rehabilitation scheme specifically for such retired employees like the respondents and in such a scheme, it can specify the terms and conditions on which such persons would be entitled to rehabilitate/alternate residence, which may include the term that these respondents or their family members do not have any residence in any part of the country. It would also be open to the Government to specify the nature of accommodation to which such retired Government servants would be entitled to or the place where they would be rehabilitated which may not necessarily be in Delhi but can be even in the NCR region. After the scheme is framed, the cases of the respondents can be scrutinized in terms of that scheme and those not found eligible for rehabilitation in terms thereof can be ousted from the present accommodation. Subject to our observations made immediately above, the appeals are hereby dismissed with costs."

9. We have heard learned counsel for the parties and find that the orders of the High Court are unsustainable. In ***Shiv Sagar Tiwari***, the large-

scale allotment of Government houses made out of turn in eleven categories was examined under the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. All such categories were of serving employees who were given out-of-turn allotments. The then Minister of Urban Development in the Central Government was asked to pay a sum of Rs.60 lakhs as exemplary damages by order dated 8.11.1996. The Court examining the argument of right to shelter, held as under:

> "3. ...May we also observe that life, livelihood and shelter are so mixed, mingled and fused that it is difficult to separate them. To take away life, it would be enough to take away livelihood; and to earn livelihood, which in urban areas is ordinarily at places away from one's own home and hearth, shelter would be necessary — be it a house or even a pavement. This Court has dealt with cases of pavement-dwellers. The locus classicus in *Olga Tellis* [*Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545] and the latest rendering is in *Ahmedabad Municipal Corpn.* v. *Nawab Khan Gulab Khan* [JT (1996) 10 SC 485]. In the case at hand, we are, however, not concerned with those who per force occupy pavements near the places of their work. *The primary subject-matter of the present petition is providing of residential accommodation in quarters built by the Government for its employees — highly or lowly paid. (Emphasis Supplied)*
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> 40. The star question as to who should face eviction is, therefore, answered by stating that it would be all those whose names find place in Categories IV, VI, IX, X, XI and such of Category VII who had not become actually entitled to in-turn allotment by the date(s) the respective reports were submitted. Those IAS, IPS and IFS and other officers who are occupying General Pool quarters, despite being eligible for quarters in the Tenure Pool, would also be evicted.
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> 46. The arbitrary exercise of power by the authorities in a big

way had led almost to the collapse of the whole system of allotment. There was a crisis-like situation and this Court had to deal with an extraordinary situation and a special procedure had to be devised to do justice to all concerned. Natural justice being a flexible principle and we being concerned with the issue of out-of-turn allotment in thousands, it was felt by us that a collective hearing would meet the requirement of natural justice as the Committee had given individual hearing to those who appeared before it. This view was taken because the basic question to be determined was whether the allotment given to an employee was on out-of-turn basis or not. In case it were to be so, it is apparent that unless an exception is made, the allottee has no right to stay, no right to occupy the premises. The hearing given by us on two occasions brought home eloquently to us that the out-of-turn allottees, who were notified and had appeared, had two principal contentions to advance — the same being the plea not to evict either on the ground of serious illness of one or the other close relatives, or to include them in the functional category. Nothing else could have really been pleaded not to evict them. These two aspects have been adequately borne in mind by us as would appear from the aforesaid discussion.

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95. Finally, we hope that coming years would not see any scam or misuse of power in making allotments of government quarters. The trust which is reposed in this context on high public functionaries would be discharged, we are sure, only to advance the object of providing of suitable conditions of work to government employees so that the Government is run on even keel; and shelter, which is a very pressing necessity of any human being, would not come to be denied if the same is otherwise due to the incumbent. A satisfied bureaucracy is as much necessary, as good political leadership, to deliver the goods. The Government of free India have many promises to keep after its tryst with destiny on the midnight of 14-8-1947. We have no doubt that all the public functionaries would so act that the meeting with destiny really sees the dawn of an era of hope for all."

10. In ***S.D. Bandi***, the occupation of a government accommodation by the members of three branches of the State i.e., legislature, executive and

the judiciary beyond the period for which the same was allotted came up for consideration. This Court, inter-alia, held as under: -

> "33.18 Since allotment of Government accommodation is a privilege given to the Ministers and Members of Parliament, the matter of unauthorized retention should be intimated to the Speaker/Chairman of the House and action should be initiated by the House Committee for the breach of the privileges which a Member/Minister enjoys and the appropriate Committee should recommend to the Speaker/Chairman for taking appropriate action/eviction within a time bound period.
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> 33.19 Judges of any forum shall vacate the official residence within a period of one month from the date of superannuation/retirement. However, after recording sufficient reason(s), the time may be extended by another one month.
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> 33.20 Henceforth, no memorials should be allowed in future in any Government houses earmarked for residential accommodation.
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> 34. It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realisation among the unauthorized occupants. The matter is disposed of with the above terms and no order is required in I.As for impleadment and intervention."

11. The Uttar Pradesh Government has framed Ex-Chief Ministers Residence Allotment Rules, 1997. This Court in ***Lok Prahari (I)*** set aside the allotment of houses to the former Chief Ministers and Ministers to

retain government accommodation even after they demit office. This Court has approved the judgment in ***S.D. Bandi's*** case, holding as under:

> "37. If we look at the position of other constitutional post holders like Governors, Chief Justices, Union Ministers, and Speaker, etc. all of these persons hold only one "official residence" during their tenure. The respondents have contended that in a federal set-up, like the Union, the State has also power to provide residential bungalow to the former Chief Minister. The above submission of the respondent State cannot be accepted for the reason that the 1981 Act does not make any such provision and the 1997 Rules, which are only in the nature of executive instructions and contrary to the provisions of the 1981 Act, cannot be acted upon.
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> 38. Moreover, the position of the Chief Minister and the Cabinet Ministers of the State cannot stand on a separate footing after they demit their office. Moreover, no other dignitary, holding constitutional post is given such a facility. For the aforestated reasons, the 1997 Rules are not fair, and more so, when the subject of "salary and allowances" of the Ministers, is governed by Section 4(2)(*a*) of the 1981 Act.
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> 46. So far as allotment of bungalow to private trusts or societies is concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/organisations at the time when there was no provision with regard to allotment of government bungalows to them and therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. *Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all such allotments, which have been made in absence of any statutory provision cannot be upheld*. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued

and must be treated as cancelled and the State shall take possession of such premises as soon as possible and at the same time, the State should also recover appropriate rent in respect of such premises which had been allotted without any statutory provision."
(Emphasis Supplied)

12. In ***Lok Prahari (II)***, this Court struck down U.P. Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 as amended in the year 2016 consequent to an order passed by this Court in the above-mentioned proceedings. The Court held as under:

> "16. The Preamble to the Constitution of India embodies, inter alia, the principles of equality and fraternity and it is on the basis of these principles of equality and fraternity that the Constitution recognises only one single class of citizens with one singular voice (vote) in the democratic process subject to provisions made for backward classes, women, children, SC/ST, minorities, etc. A special class of citizens, subject to the exception noted above, is abhorrent to the constitutional ethos.
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> 36. In the light of the above views, the allocation of government bungalows to constitutional functionaries enumerated in Section 4(3) of the 1981 Act after such functionaries demit public office(s) would be clearly subject to judicial review on the touchstone of Article 14 of the Constitution of India. *This is particularly so as such bungalows constitute public property which by itself is scarce and meant for use of current holders of public offices*. The above is manifested by the institution of Section 4-A in the 1981 Act by the Amendment Act, 1997 (8 of 1997). The questions relating to allocation of such property, therefore, undoubtedly, are questions of public character and, therefore, the same would be amenable for being adjudicated on the touchstone of reasonable classification as well as arbitrariness." *(Emphasis supplied)*

13. In view of the judgments referred above, the Government accommodation could not have been allotted to a person who had demitted office. No exception was carved out even in respect of the persons who held Constitutional posts at one point of time. It was held that the Government accommodation is only meant for in-service officers and not for the retirees or those who have demitted office. Therefore, the view of the learned Delhi High Court and that of the Punjab & Haryana High Court is erroneous on the basis of compassion showed to displaced persons on account of terrorist activities in the State. The compassion could be shown for accommodating the displaced persons for one or two months but to allow them to retain the Government accommodation already allotted or to allot an alternative accommodation that too with a nominal licence fee defeats the very purpose of the Government accommodation which is meant for serving officers. The compassion howsoever genuine does not give a right to a retired person from continuing to occupy a government accommodation.

14. According to a policy framed by the government, a displaced person is to be lodged in a transit accommodation and if it is not available then cash compensation is to be provided. But the displaced persons cannot occupy government accommodation. If a retired government employee had no residence, they have an option to avail transit accommodation or to receive cash compensation in the place of transit accommodation. The right of shelter is taken care of when alternative Transit ac-

commodation is made available to the migrants to meet out the emergent situation. There is no policy of the Central Government or the State Government to provide accommodation to displaced persons on account of terrorism in the State of Jammu & Kashmir. Such directions of the Delhi High Court and of the Punjab & Haryana High Court is *de hors* any policy of allotting accommodation to the migrants under the guise of the right to shelter which is clearly in excess of jurisdiction vested with the Courts. The hardship faced by them does not lead to a corresponding duty of the State to provide them alternative government accommodation.

15. It was argued by Mr. Handoo that the right of shelter is a fundamental right under article 21 of the Indian Constitution. A right to shelter is a fundamental right, that may not be disputed, but such a right of shelter is granted to millions of Indians who do not have shelter. A section of society, more so retired government employees, who had earned pension, drawn retirement benefits cannot be said to be in such condition, where the government should provide government accommodation for an unlimited period. The direction to allow a retired government servant to retain government accommodation for an indefinite period, to say the least, is a distribution of state largesse without any policy of the State. A section of the migrants cannot be treated as preferential citizens to give them the right to shelter at the cost of millions of other citizens who do not have a roof over their heads. The

right of shelter to the displaced person is satisfied when accommodation had been provided in the transit accommodation. Such right of shelter does not and cannot extend to provide a government accommodation.

16. ***J.L. Koul*** is a case, accepting the rehabilitation scheme framed by the State authorities based on which appropriate accommodation was provided to 31 appellants and was given accommodation which was in their possession. Such direction was in terms of Article 142 of the Constitution. This Court in a judgment reported as ***Indian Bank*** v. ***ABS Marine Products (P) Ltd.***[9] held that the High Courts repeatedly followed a direction issued under Article 142, by treating it as the law declared by this Court. It was held that the Courts should therefore be careful to ascertain and follow the *ratio decidendi*, and not the relief given on the special facts. This Court held as under:

> "26. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the *ratio decidendi*, and not the relief given on the special facts,

9 (2006) 5 SCC 72

exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may."

17. In another judgment reported as ***Ram Pravesh Singh & Ors.*** v. ***State of Bihar & Ors.***[10], it was held that any direction given on special facts, in the exercise of jurisdiction under Article 142, is not a binding precedent. This Court held as under:

> "23. The appellant next submitted that this Court, in some cases, has directed absorption in similar circumstances. Reliance is placed on the decision in *G. Govinda Rajulu* v. *A.P. State Construction Corpn. Ltd.* [1986 Supp SCC 651 : 1987 SCC (L&S) 71] We extract below the entire judgment: (SCC p. 651, paras 1-2)
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> > "*1*. We have carefully considered the matter and after hearing learned counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations.
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> > *2*. The writ petition is disposed of accordingly. There is no order as to costs."
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> The tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this Court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent. Therefore, the decision in *Govinda Rajulu* [1986 Supp SCC 651 : 1987 SCC (L&S) 71] cannot be the basis for claiming relief similar to what was granted in that case. A similar contention was negatived by the Constitution Bench in *Umadevi*

10 (2006) 8 SCC 381

(3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] : (SCC p. 39, para 46)

> "The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation."

18. Therefore, the direction issued in ***J.L. Kaul*** that the retirees shall continue to possess the accommodation in their possession is a direction under Article 142 of the Constitution. This Court had accepted the rehabilitation scheme finalized by the State Government.

19. Dhar was an officer of the Intelligence Bureau. He has drawn his salary and availed of alternative accommodation for 15 years after his retirement along with pensionary benefits. There is no indefeasible right in any citizen for allotment of government accommodation on a nominal licence fee. The government accommodation is meant for the serving government employees to facilitate the discharge of their duties. The government accommodation is not meant for the retirees. The accommodation to the retirees is at the cost of serving officers. In terms of the policy which was considered in ***J.L. Koul***, the Kashmiri migrants are entitled to transit accommodation and if transit accommodation could not be provided then money for residence and expenses. Dhar and such like persons are not from the poorest section of the migrants but have worked in the higher echelons of the bureaucracy. To say that they are enforcing their right to shelter only till such time the conditions are conducive for their safe return is wholly illusory. No one is

sure that at what point of time the condition will be conducive to the satisfaction of the migrants. Such benevolence and preferential right to section of the citizens is unfair to the serving officers. Dhar like persons should have compassion for their fellow employees who may be without any government accommodation. The right to shelter does not mean right to government accommodation. The government accommodation is meant for serving officers and officials and not to the retirees as a benevolence and distribution of largesse.

20. Thus, we find that the orders passed by the High Court are absolutely without any basis and in the absence of any policy of allotment of government accommodation to a retired government servant, who may be victim of terrorism. The orders passed are wholly arbitrary and irrational. We are unable to agree with the reasoning recorded by Delhi and Punjab & Haryana High Courts.

21. Consequently, the present appeal is allowed. The order passed by the High Court is set aside and the writ petition challenging the order under the Act is restored. However, the respondent- Dhar is granted time to hand over vacant physical possession of the premises on or before 31.10.2021, i.e., after 15 years of his attaining the age of superannuation.

22. The appellant shall submit a report of the action taken against the retired Government officials who are in Government accommodation post their retirement by virtue of the orders of the High Courts on or before 15.11.2021.

.....J.
(HEMANT GUPTA)

.....J.
(A.S. BOPANNA)

NEW DELHI;
AUGUST 5, 2021.