

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- **WP(C) No. 290/2022**
c/w
WP(C) No. 293/2022

Dheeraj Pargal

.....Petitioner

Through: Mr. P.N. Raina, Sr. Advocate with
Mr. J.A. Hamal, Advocate

Vs

UT of J&K and another

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Nazia Fazal, Assisting Counsel.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT
(21.07.2026)

01. The adjudication of two cases i.e. **WP(C) No. 290/2022** and **WP(C) No. 293/2022**, both instituted on **15/02/2022** bearing an interrelation and interlocking, both factual as well as legal, is being accorded vide this common judgment meant to serve both.

02. This Court is first coming to deal with the factual conspectus of **WP(C) No. 290/2022**.

03. This writ petition came to be filed on **15.02.2022** by the petitioner-Dheeraj Pargal whose father – Rakesh Kumar

Pargal was a government servant serving as **Junior Assistant** in Food, Civil Supplies & Consumer Affairs Department (FCS&CAD), Udhampur.

04. The petitioner's father – Rakesh Kumar Pargal was brought under scanner for alleged acts of omission and commission as a public servant on the purported information that he had amassed disproportionate assets by misuse and, abuse of his official position as a public servant and consequently, a **Preliminary Enquiry** (in short "**PE**") came to be set up and initiated in the year **2015** by the Anti Corruption Bureau ("**ACB**" in short), Police Station Udhampur.

05. The purported purpose of said PE was obviously to confirm at *prima facie* level that the allegation of said Rakesh Kumar Pargal having accumulated and amassed huge assets worth crores of rupees, both in the form of moveable and immovable properties in his name as well as in the name of his family members beyond his known source of income was worth some substance so as to take a call whether to book him formally for investigation by registration of an FIR or not.

06. The petitioner's father- Rakesh Kumar Pargal, feeling exasperated that said PE against him by the ACB, Udhampur has stretched for the last more than five years amounting to witch hunting, filed a writ petition **WP(C) No. 1147/2020**

before this Court thereby challenging the very legitimacy of said long stretched PE.

07. This writ petition **WP(C) No. 1147/2020** was filed in **June, 2020** in which, in terms of an order dated **10.07.2020**, this Court came to call for a status report of **PE No. 03 of 2015** from the ACB, Udhampur.

08. It seems that in order to avoid an explanation for and to cover up prolonged delay in taking said **PE No. 03 of 2015** to its logical end, the ACB, Udhampur rushed to register an **FIR No. 01/2020** dated **04.08.2020** so as to be able to show before this Court in response to said writ petition **WP(C) No. 1147/2020** in the context of status report solicited about action taken.

09. Registration of **FIR No. 01/2020** came to bear an opening line that a **PE** conducted to look into allegations against Rakesh Kumar Pargal has been found to constitute offences punishable under section **5(1)(e)** read with section **5(2)** of the **Jammu & Kashmir Prevention of Corruption Act, Svt., 2006** (in short "**PC Act, Svt., 2006**").

10. In said **FIR No. 01/2020**, it came to be mentioned that it came to surface during **PE** that said Rakesh Kumar Pargal has amassed huge assets worth crores of rupees in the

form of moveable/immovable properties, in his own name and in the name of his family members, which are:-

- a) 6 shops;
- b) a House;
- c) a Showroom;
- d) a Plot measuring approximately 19 marlas;
- e) a Plot measuring 1 kanal 17 marlas at village Battal Ballian, Udhampur;
- f) Innova car;
- g) Royal Enfield motorcycle;
- h) Tata Ace Zip;
- i) Vespa Scooty; &
- j) Jewellery etc.

11. In addition, FIR also came to bear a mention that said Rakesh Kumar Pargal has also constructed a palatial house at Badali, Udhampur and is in possession of insurance policies, bank deposits in his own name and in the name of his family members besides having substantial shares in M/s Kamdhenu Apartments. It also came to be mentioned in the FIR that said Rakesh Kumar Pargal had channelized ill-gotten money to the tune of about Rs. 80 lacs through business concerns of his sons.

12. The investigation of said FIR was shown entrusted to Dy. SP, **ACB, Udhampur/Reasi (UR) Range.**

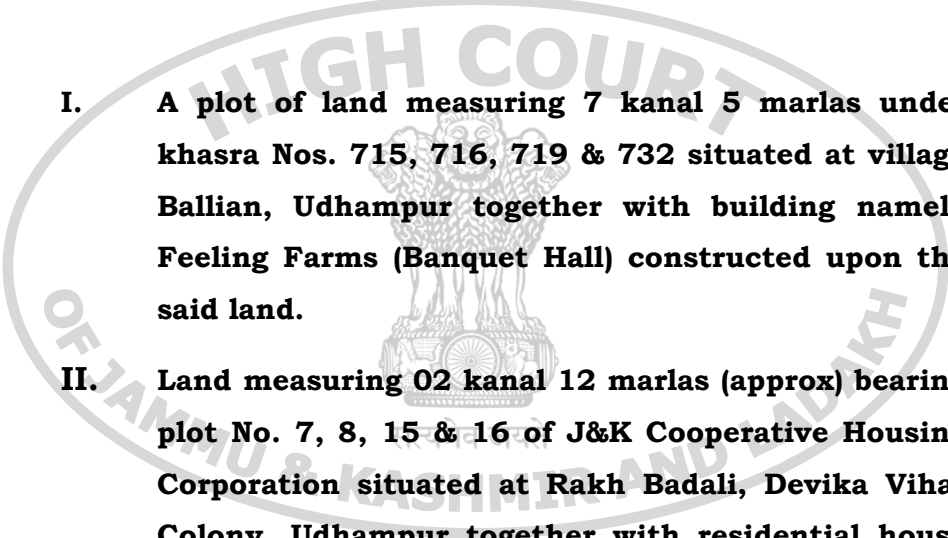
13. By reference to investigation of said FIR, the ACB, Udhampur had come to conduct search of two residential houses viz. **H. No. 170, Ward No. 13, Hospital Road Udhampur and house situated at Devika Vihar Colony, Rakh Badali, Near SKPA, Udhampur** and also conducted search of commercial buildings, namely, **Dogri Haveli/Feeling Banquet Hall situated at Battal Ballian, Udhampur** on the basis of search warrant from the competent criminal court of law and in the process allegedly seizing incriminating documents.

14. Investigating Officer reported that Rakesh Kumar Pargal is in possession of the following properties:-

- a) Six shops and a showroom in Udhampur.
- b) A residential house at Hospital Road, Udhampur.
- c) A plot of land measuring **07 Kanal 05 Marlas** under Khasra Nos. **715, 716, 719, 732**, situated at **Village Ballian, Udhampur**, together with a building, namely **Feeling Farms (Banquet Hall)**, constructed upon the said land.
- d) Land measuring **02 Kanal 12 Marlas (approx.)**, bearing Plot Nos. **7, 8, 15 & 16** of **J&K Cooperative Housing Corporation**, situated at **Rakh Badali, Devika Vihar Colony, Udhampur**, together with a residential house constructed thereupon on the said land.

- e) Various vehicles, jewellery, insurance policies, and bank deposits.

15. Entertaining an apprehension that said Rakesh Kumar Pargal may alienate the properties so identified or otherwise deal with them to defeat the purpose of investigation and prosecution of the case, the Investigating Officer, ACB came to invoke provisions of **section 8-B of PC Act, Svt., 2006** and carried out attachment and seizure of the properties, which are:-

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- I. **A plot of land measuring 7 kanal 5 marlas under khasra Nos. 715, 716, 719 & 732 situated at village Ballian, Udhampur together with building namely Feeling Farms (Banquet Hall) constructed upon the said land.**
- II. **Land measuring 02 kanal 12 marlas (approx) bearing plot No. 7, 8, 15 & 16 of J&K Cooperative Housing Corporation situated at Rakh Badali, Devika Vihar Colony, Udhampur together with residential house constructed upon the said land.**

Reference to this factual aspect is gatherable from order dated **11.06.2021** of the Designated Authority under sub-section (1)(a) of section 2 of the PC Act, Svt., 2006 which being the Commissioner/Secretary General Administration Department (GAD), Govt. of J&K.

16. In furtherance of investigation, Sr. Superintendent of Police (SSP), ACB Udhampur, by virtue of an order dated

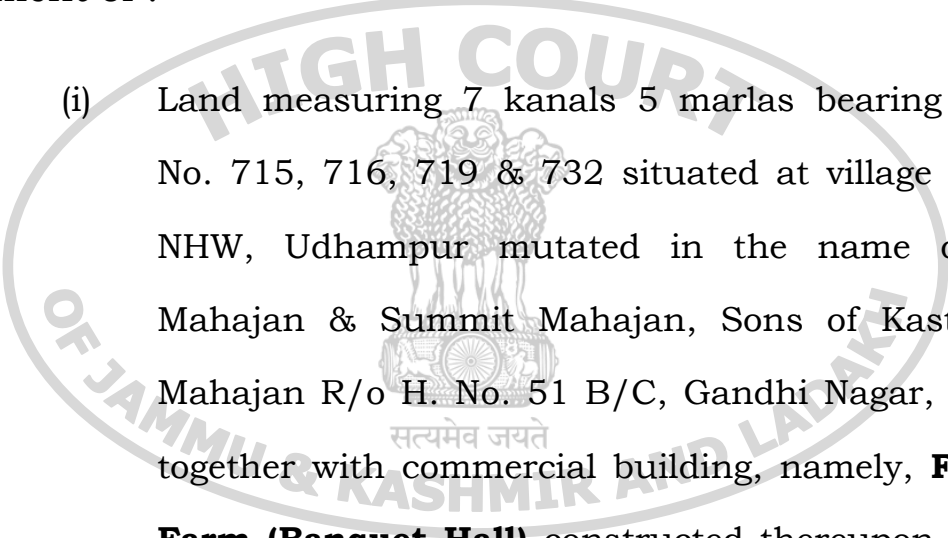
17.10.2020, effected attachment of premises comprised of **1.18 kanal of land** bearing **khasra No. 717 new/270 old** along with a commercial building thereupon known as “**Dogri Haveli**” related to the petitioner herein. This exercise of attachment was in purported exercise of powers under **section 8-B of the PC Act, Svt., 2006**. Reference to fact of passing of said order dated **17.10.2020** is gatherable from order dated **23.06.2021** of the Special Judge (Anti-Corruption), Udhampur on file **No. 10/Cri. Appeal of 2021** and file **No. 12/Anti Corruption/appeal of 2021**.

17. The aforesaid order dated **17.10.2020** effecting attachment of the property mentioned therein in **para 3 at serial No. a, b, c, d & e** came to be confirmed by an order of confirmation dated **15.01.2021** passed by the Designated Authority as per requirement under section 8-B of the PC Act, Svt., 2006.

18. Reckoning the aforesaid course of action being prejudicial to his position, the petitioner’s father – Rakesh Kumar Pargal came to prefer an appeal on **file No. 10/Cri. Appeal** on 12/02/2021 before the court of Special Judge (Anti Corruption), Udhampur.

19. The institution of aforesaid appeal on file **No. 10/Cri. Appeal** by the petitioner's father -Rakesh Kumar Pargal was as a matter of remedy under section 8-C of the PC Act, Svt., 2006.

20. The aforesaid development came to be followed by issuance of a letter **No. SSP/ACB-UR/FIR/01-20/496** dated **09.03.2021** for the purpose of submitting a detailed report accompanying therewith to the **Director, Anti Corruption Bureau, J&K, Jammu** for the purpose of accord of approval for attachment of :-

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- (i) Land measuring 7 kanals 5 marlas bearing khasra No. 715, 716, 719 & 732 situated at village Ballian, NHW, Udhampur mutated in the name of Amit Mahajan & Sumit Mahajan, Sons of Kasturi Lal Mahajan R/o H. No. 51 B/C, Gandhi Nagar, Jammu together with commercial building, namely, **Feelings Farm (Banquet Hall)** constructed thereupon with all fixtures.
- (ii) Plot No. 07, 08, 15 & 16 (total land measuring 02 kanals 12 marlas approximately) situated at Rakh Badali, Devika Vihar Colony near SKPA, Udhampur purchased by **Sumit Mahajan, Amit Mahajan, Veena Mahajan & Kasturi Lal Mahajan** together with residential house constructed thereupon with all fixtures as benami properties under section 8-B of the PC Act, Svt., 2006.

21. From the end of the **Director, Anti Corruption Bureau, J&K, Jammu**, an approval for attachment of the aforesaid properties came to be granted by an Order **No. ACB/FIR/01-2020-J-611** dated **10.03.2021** in purported requirement of section 8-B of PC Act, Svt., 2006.

22. With said approval of attachment in his hand, the Sr. Superintendent of Police (SSP), ACB, UR, as being the Investigator of the case, in exercise of power under section 8-B of the PC Act, Svt., 2006 by virtue of an order **No. SSP/ACB/UR/01/2020/512-16** dated **13.03.2021**, came to order the attachment of aforementioned two properties as benami properties of **Rakesh Kumar Pargal** with further direction to him as well as his family members and **Amit Mahajan, Sumit Mahajan, Veena Mahajan** and also their family members not to transfer or otherwise deal with the attached properties so named in the order.

23. This development in the form of issuance of order **No. SSP/ACB/UR/01/2020/512-16** dated **13.03.2021** by the Sr. Superintendent of Police (SSP), ACB, UR led to filing of a writ petition **WP(C) No. 518/2021** on **15/03/2021** by the petitioner assailing the aforesaid course of action. This writ petition was filed by the petitioner along with his brother – Digvijay Pargal.

24. On the other hand, Sr. Superintendent of Police (SSP), ACB, UR came forward with a referral report **No.SSP/ACB-UR/FIR/01-20/523-25** dated **15.03.2021** to the **Designated Authority** envisaged section 2(1)(a) of PC Act, Svt., 2006 for confirmation of the attachment order dated **13.03.2021**.

25. The petitioner, at his end also came to invoke appellate remedy available under section 8-C of PC Act, Svt., 2006 thereby challenging the order of attachment dated **13.03.2021** passed by the Sr. Superintendent of Police (SSP), ACB, UR in terms whereof the two properties attached thereby were suffering attachment and awaiting confirmation from the Designated Authority under section 2(1)(a) of PC Act, Svt., 2006 in response to referral report **No. SSP/ACB-UR/FIR/01-20/523-25** dated **15.03.2021** of Sr. Superintendent of Police (SSP), ACB, UR.

26. The petitioner instituted his appeal on **22.03.2021** on file **No.12/Anticorruption/Appeal** before the Special Judge (Anti Corruption), Udhampur.

27. At the time of filing of the petitioner's said appeal, the petitioner's father Rakesh Kumar Pargal's appeal on file **No. 10/Cri. Appeal** was already pending before the Special Judge (Anti Corruption), Udhampur addressed against order dated

15/01/2021 of the Designated Authority of the Commissioner/Secretary to Govt., General Administration Department, Govt., of J&K which in turn had confirmed order dated 17/10/2020 of the SSP, ACB Udhampur.

28. After having invoked the appellate remedy before the Special Judge (Anti Corruption), Udhampur, the petitioner came to withdraw his writ petition **WP(C) No. 518/2021** which came to be dismissed as withdrawn on **05.04.2021**.

29. By virtue of a notice **No. GAD(Vig)37/2020-I** dated **05.04.2021**, the **Designated Authority** came forward with a notice for appearance of the parties before it. The Designated Authority so issuing a notice was **Commissioner/Secretary to Government, General Administration Department, Govt. of J&K**.

30. By virtue of an order dated **11.06.2021**, the **Designated Authority**, in exercise of powers under section 8-B(3) of PC Act, Svt., 2006 came to confirm the order of the properties' seizure/attachment so issued by the Investigating Officer. The exercise of jurisdiction by the Designated Authority was purportedly upon the referral report **No. SSP/ACB-UR/FIR/01-20/523-25** dated **15.03.2021** of Sr. Superintendent of Police (SSP), ACB, UR.

31. The petitioner was one of the parties attending the proceedings before the **Designated Authority**, objecting to the very attachment of the properties in particular the Banquet Hall known as “**Feeling Farms**” existing upon khasra Nos. 715, 716, 719 & 732 at village Ballian, National Highway, Udhampur.

32. The land parcel housing the said banquet hall of “**Feeling Farms**” was shown by the petitioner to the extent of proving before the Designated Authority that the same was owned by **Amit Mahajan** and **Sumit Mahajan** both sons of Kasturi Lal Mahajan, whereas the use of said land was availed by the petitioner for setting up of a prefabricated structure in the form of a banquet hall and open lawn commonly known as “**Feeling Farms**” encompassing **7.5 kanals** of land. The business venture of the petitioner for running the said banquet hall was shown to be backed by financial assistance availed by the petitioner and his brother from the financial institutions amounting to Rs. 95 lacs to Rs. 1 crore against the mortgage of the property and gold loans etc.

33. After hearing the petitioner and other respondents in the proceedings before it and also the counsel for the Investigating Officer of ACB, UR, the **Designated Authority** came forward with a purported finding that claim about

property in question been acquired through legal source of money is factually not correct as total amount from legal sources as well as bank loans raised is lesser than the amount incurred on the construction of the banquet hall, namely, **“Feeling Farms”** and further that the petitioner and his brother, as being sons of Rakesh Kumar Pargal, raised the property with the help of their father i.e. Rakesh Kumar Pargal as had purportedly emerged during the course of investigation conducted so far till date wherein it had surfaced that an amount of **Rs. 82,40,735.10** had been circulated/channelized by Rakesh Kumar Pargal in the business activities of his sons i.e. the petitioner and his brother thereby *prima facie* establishing that Rakesh Kumar Pargal had utilized his ill-gotten money earned by indulging in corrupt practices and illegal practices during his service in establishing the business of his sons i.e. the petitioner and his brother.

34. Even with respect to the title of the property of land in **khasra No. 717**, same was taken to be benami held in the name of **Amit Mahajan** and **Sumit Mahajan** and in observing so the Designated Authority drew an inference from the fact that there was no rent-deed/lease-deed held by the petitioner from **Amit Mahajan** and **Sumit Mahajan**.

35. The assessment of the premises of “**Feeling Farms**” and “**Dogri Haveli**” was reckoned to be at a value of Rs. 3 crores as against the loan availed of Rs. 95 lacs to Rs. 1 crore by the petitioner on the basis whereof the Designated Authority ruled out any justification that the assets were raised by the known sources of income by Rakesh Kumar Pargal and his family members.

36. Thus, by virtue of an order dated **11.06.2021**, the attachment came to be confirmed by the **Designated Authority**.

37. Immediately following passing of the order dated **11.06.2021** by the Designated Authority, the Special Judge (Anti Corruption), Udhampur, on the other hand by virtue of a common order dated **23.06.2021**, came to dispose of two pending appeals i.e. appeal of the petitioner’s father Rakesh Kumar Pargal on file **No. 10/Cri. Appeal** and the petitioner’s appeal on file **No. 12/Anticorruption/Appeal**, which were addressed against order dated **15.01.2021** passed by the Designated Authority of Commissioner/Secretary to Govt., General Administration Department, Govt. of J&K with respect to the attachments of the properties which were enlisted in para 3 at serial No. a, b, c, d & e. Reference in this regard is

made in para 4 of order dated **23.06.2021** of Special Judge Anti-Corruption, Udhampur.

35. The appellate court of Special Judge (Anti Corruption), Udhampur came to formulate three points for its consideration for adjudication of said two appeals and said three points were:-

- 1. Whether the appellant Dheeraj Pargal had the financial capacity to purchase the land & raise the structure named as Dogra Havilli upon that land?**
- 2. Whether the designated authority did not associate the owner of the property namely Dheeraj Pargal before confirming the attachment/seizure order passed by the I.O therefore, the designated authority has not followed the principle of natural justice?**
- 3. Whether the designated authority has confirmed the seizure order with there being any apprehension of property being sold or otherwise disposed of?**

36. The court of Special Judge (Anti Corruption), Udhampur by reference to point No. 1 came to hold that the inference drawn by the Investigating Officer that the property purchased by the appellant Rakesh Kumar Pargal, the petitioner was acquired by ill-gotten money being proceeds of alleged crime was premature, not based on material evidence but on assumption and presumption as the appellant –Dheeraj

Pargal, the petitioner had independent resources and capacity to create the resources to purchase the seized land and the structure constructed upon said land. The point No. 1, thus, came to be answered accordingly.

37. On point No. 2, the court of Special Judge (Anti Corruption), Udhampur by referring to the provisions of sections 8-B & 8-C of PC Act, Svt., 2006 came to hold that the Designated Authority was pre-determined to confirm the order pertaining to the seizure of the property passed by the Investigating Officer.

38. Point No. 3, as to whether there was intent to dispose of the attached property also came to be held against ACB, Udhampur.

39. In final terms, it came to be held that the attached property is the land of the appellant- Dheeraj Pargal, the petitioner herein who was not figuring as an accused in said **FIR No. 01/2020** and was, thus, not under any investigation but still without any notice served or given to him before confirming attachment, the Designated Authority, without any just and reasonable cause, condemned the petitioner Dheeraj Pargal unheard rendering the confirmation order in contravention of section 8-B, sub-section 3 of the PC Act, Svt.,

2006 besides being violative of rules of natural justice rendering confirmation order unsustainable in the eyes of law.

40. Consequently, the Special Judge (Anti Corruption), Udhampur, by virtue of its order dated **23.06.2021**, came to set aside the order of attachment passed by the **Investigating Officer** and also order of confirmation passed by the **Designated Authority** but simultaneously mandated the petitioner's father- Rakesh Kumar Pargal and the petitioner herein not to sell/part with/encumber or otherwise dispose of the attached property for a period of one year or till the investigation was to complete or fresh order of attachment was drawn whichever was to happen earlier.

41. On the other hand, order dated **11.06.2021** of the Designated Authority came to be challenged in three different appeals before the Court of Special Judge (Anti Corruption), Udhampur. By virtue of said order dated **11.06.2021**, two properties which came to be subject matter of attachment were:-

- I) **A plot of land measuring 07 kanal 05 marlas under khasra Nos. 715, 716, 719 & 732 situated at village Ballian, Udhampur together with building namely Feeling Farms (Banquet Hall) constructed upon the said land.**
- II) **Land measuring 02 kanal 12 marlas (approx) bearing plot No. 7, 8, 15 & 16 of J&K Cooperative Housing**

Corporation situated at Rakh Badali, Devika Vihar Colony, Udhampur together with residential house constructed upon the said land.

42. In terms of this order dated **11.06.2021**, the **Designated Authority** of Commissioner/Secretary to Govt., General Administration Department, Govt., of J&K confirmed the attachment of the aforesaid two properties.

43. This order dated **11.06.2021** generated three statutory appeals with scope provided therefor under PC Act, Svt., 2006.

44. In this regard, the petitioner came forward with an appeal on file **No. 12/Cr. Appeal** instituted on **13.07.2021**, appeal filed by the petitioner's father-Rakesh Kumar Pargal on file **No. 13/Cr. Appeal** instituted on **13.07.2021** and 3rd appeal preferred by **Amit Mahajan & Sumit Mahajan** on file **No. 14/Cr. Appeal** instituted on **13.07.2021**.

45. All the said appeals were filed under section 8-C of PC Act, Svt., 2006 challenging said order dated **11.06.2021** of the **Designated Authority**.

46. By a common order dated **27.11.2021**, the Special Judge (Anti Corruption), Udhampur came to dispose of aforesaid three appeals.

47. In para **12** & **17** of order dated **27.11.2021**, the two properties in issue came to be referred by the Special Judge (Anti-Corruption), Udhampur.

48. In para **22** of its order dated **27.11.2021**, the court of Special Judge (Anti Corruption), Udhampur came to hold that attached property "**B**" of land measuring **2 kanals 12 marlas** approximately, bearing plot No. 7, 18, 15 & 16 of the J&K Cooperative Housing Corporation situated at Rakh Badali, Devika Vihar Colony, Udhampur together with residential house constructed thereupon belongs to two appellants - **Sumit Mahajan** and **Amit Mahajan** of **appeal No. 14/Cr. Appeal**, though, there is no authentic document with respect to the construction of house thereupon.

49. The Special Judge (Anti Corruption), Udhampur came to hold that the **Designated Authority** ought to have issued notices to **Sumit Mahajan** and **Amit Mahajan** and their parents, namely, **Kasturi Lal Mahajan** and **Veena Mahajan** so as to hear them before confirming attachment/seizure order passed by Sr. Superintendent of Police (SSP), ACB, UR as without issuance of any notice to said four named persons, the confirmation order passed by the Designated Authority was in contravention of section 8-B(3) of PC Act, Svt., 2006 and to that extent the order was held to be not sustainable.

50. With respect to the attached property **“A”** of plot of land measuring **7 kanals 5 marlas** comprising **khasra No. 715, 716, 719 & 732** at village Ballian, Udhampur together with building, namely, **“Feeling Farms”** (Banquet Hall) constructed upon said land, the confirmation of attachment by the Designated Authority was held sustainable but it came to be observed that the investigation of case **FIR No. 01/2020** was yet to be completed.

51. Therefore, to said extent of property **“A”** the order of confirmation was modified by permitting the appellants – **Sumit Mahajan** and **Amit Mahajan** to use the property but without any liberty to sell, part with, encumber or otherwise dispose of the said property till investigation/trial is completed or fresh order of attachment is drawn whichever happening earlier or with the permission of the Director, ACB or the Court.

52. The status of attached property of **“Feeling Farms”** (Banquet Hall) was confirmed by directing the Investigating Officer i.e. Sr. Superintendent of Police (SSP), ACB, UR to ensure the safety of attached/seized property of Feeling Farms (Banquet Hall).

53. It is against the aforesaid outcome of his appeal that the petitioner herein came forward with institution of the

present writ petition **WP(C) No. 290/2022** on **15.02.2022** seeking the following reliefs:-

A. Certiorari:

- a. Quashing FIR 01 of 2020, registered by Police Station Anti-Corruption Udhampur,
- b. Order dated 27-11-2021, passed by the Learned Special Judge, Anti-Corruption Udhampur by virtue of which the Learned Court has dismissed the appeal of the petitioner against the order of Designated Authority (Under the provisions of Jammu and Kashmir Prevention of Corruption Act, 2006) dated 11-06-2021.
- c. Order dated 11/06/2021 passed Designated Authority (Under the provisions of Jammu and Kashmir Prevention of Corruption Act, 2006) confirming the order of attachment passed by respondent 02.
- d. Order of the attachment dated 13-03-2021, passed by the SSP Anti-Corruption Bureau Udhampur, qua the attachment of banquet namely "Feeling Farms,"

As being illegal, without jurisdiction and against the interest of justice.

- B.** Mandamus declaring section 8-B of J&K Prevention of Corruption Act as unconstitutional being violative of Article 14, 19 & 21 of the Constitution of India.
- C.** The Hon'ble Court may also pass any other writ, order of direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

54. Following the institution of the writ petition **WP(C) No. 290/2022**, came the institution of the writ petition **WP(C) No. 293/2022** this one preferred by the two petitioners i.e. **Amit Mahajan & Sumit Mahajan** who also being aggrieved of the outcome of their appeal in terms of an order dated

27.11.2021 passed by learned Special Judge (Anti Corruption), Udhampur to the extent relating to the confirmation of attachment of land measuring **7.5 kanals comprising khasra No. 715, 716, 719 & 732** situated at village Ballian, tehsil & district Udhampur whereupon **“Feeling Farms”** (Banquet Hall) related to the petitioner – Dheeraj Pargal of **WP(C) No. 290/2022** was obtaining.

55. The relief claimed by the writ petitioners – **Amit Mahajan & Sumit Mahajan** in their writ petition **WP(C) No. 293/2022** is to the following effect:-

A. *Quashing:*

- (i) *FIR No. 01/2020, Police Station Anti-Corruption Bureau, Udhampur;*
- (ii) *Order of attachment dated 13/03/2021 as issued by respondent 02; जयते*
- (iii) *Order dated 11/06/2021, as passed by respondent 01, whereby order of attachment dated 13/03/2021 was confirmed;*
- (iv) *Order dated 27/11/2021, passed by Ld. Special Judge Anti-Corruption, Udhampur, where under, Ld. Special Judge has declined to release property of the petitioners-land measuring 7 Kanals 5 Marlas bearing Khasra Nos. 715, 716, 719 and 732 situated at village Vallian, Tehsil and District Udhampur, as being against the interest of justice.*

B. *Declaring Section 8-B of J&K Prevention of Corruption act as ultra vires being violative of Article 14, 19 and 21 of Constitution of India.*

C. *The Hon'ble Court may also pass any other writ, order or direction as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.*

56. The reply to the writ petitions came to be filed on **05.04.2022** wherein it came to be reported that investigation was still going on, meaning thereby an exercise which came to be undertaken in the year **2015** by reference to PE was not still seeing the end result in terms of investigation till **April, 2022**.

57. During the pendency of two writ petitions, the main actor i.e. Rakesh Kumar Pargal came to demise on **03.11.2022** and to said effect application **CM No. 696/2023** came to be preferred on **10.02.2023** to notify the fact of death of said Rakesh Kumar Pargal having taken place.

58. It is the death of Rakesh Kumar Pargal, the father of the petitioner which has self-generated a proposition as to whether the entire course of action and exercise at the end of the respondents, genesis of which has been given hereto before, comes to an end without any scope for further continuation of proceedings on any basis whatsoever particularly by reference to the status of the parties allegedly referred to the subject matter of investigation.

59. Now, before proceeding on legal side of matter meant for adjudication, it is essential to have the reading and

conspectus of the relevant provisions of the PC Act, Svt., 2006 by reference to which the legal proceedings so far had been taken vis-à-vis Rakesh Kumar Pargal and the properties allegedly co-related with and to him. In this regard, following sections of PC Act, Svt., 2006 are worth taking reading and reference:-

“5. Criminal misconduct

(1) A public servant is said to commit the offence of Criminal misconduct—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the State Ranbir Penal Code, Samvat 1989; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the persons so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation:— For the purposes of this section, “known sources of income” means income received from any lawful source when such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant”.

(1A) Notwithstanding anything contained in sub-section (1), a member of medical or para-medical staff of the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall be deemed to have committed the offence of criminal misconduct if he resorts to private practice in any form or manner. The Government shall be competent to notify any other Institutes or College for purposes of this section.

(2) any public servant who commits an offence of criminal misconduct as referred to in clauses (a), (b) and (e) of subsection (1), shall be punishable with imprisonment for a term which shall not be less than 2 years but which may extend to seven years and shall also be liable to fine and if he commits criminal misconduct as referred to in clauses (c) and (d) of sub-section (1) shall be punishable and imprisonment for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine.

(2-A) Whoever abets or aids in the commission of criminal misconduct under sub-section (1-A) or allows his premises or Nursing Home to be used for private practices in contravention of the said sub-section shall be punishable with imprisonment for a term which may

extend to three years and shall also be liable to fine which may extend up to rupees ten thousand:

Provided that the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall publish the names and particulars of its medical and para-medical staff annually in at least two local dailies

(3) Whoever attempts to commit an offence referred to in clause (c) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) Where a sentence of fine is imposed under the provisions of this Act, the Court in fixing the amount of fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

(5) The provisions of this section shall be in addition to and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.

8-B. Powers of the investigating officers-

(1) If an officer (not below the rank of Superintendent of Police) of the Vigilance Organization, **investigating an offence committed under this Act, has reason to believe** that any **property in relation to which an investigation is being conducted has been acquired by resorting to such acts of omission and commission which** constitute an offence of 'criminal misconduct' as defined under section 5, **he shall**, with the prior approval in writing of the Commissioner of the Vigilance Organization, **make an order seizing such property** and, where it is not practicable to seize such property, **make an order of attachment directing** that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order or of the Designated Authority before whom the

properties seized or attached are produced and a copy of such order shall be served on the person concerned:

Provided that the Investigating Officer may, at any stage of investigation after registration of F.I.R. in respect of any case under the Act where he has reason to believe that such property is likely to be transferred or otherwise dealt with to defeat the prosecution of the case direct, with the prior approval of the Vigilance Commissioner, that such property shall not be transferred or dealt with for such period, not exceeding **ninety days**, as may be specified in the order except with the prior approval of the Designated Authority.

[Explanation: – For purposes of this section **“attachment” shall include temporarily assuming the custody, possession and/or control of such property**].

(2) The investigating officer **shall inform the Designated Authority, within forty eight hours**, of the seizure or attachment of such property together with a **report of the circumstances occasioning the seizure** or attachment of such property, as the case may be.

(3) It shall be open to the Designated Authority before whom the seized or attached properties are produced either **to confirm or revoke the order of seizure or attachment so issued within 4 [thirty days]**:

Provided that an opportunity of being heard is afforded to the Investigating Officer and the person whose property is being attached or seized before making any order under this sub-section:

Provided further that till disposal of the case the Designated Authority shall ensure the safety and protection of such property.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) Any person aggrieved by an order under the proviso to sub-section (1) **may apply to the Designated Authority** for grant of permission **to transfer or otherwise deal with such property**.

(6) The Designated Authority may either grant, or refuse to grant, the permission to the applicant.

(7) The Designated authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

8-C. Appeal against the order of Designated Authority –

(1) **Any person aggrieved by an order made by the Designated Authority under sub-section (3) or subsection (5) of section 8-B 1** [may prefer an appeal, within one month from the date of receipt of the order, to the Special Judge] (Anti-Corruption) (hereinafter referred to as Special Court) and **the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property or pass such order as it may deem just and proper.**

(2) Where any property is seized or attached under section 8-B and the Special Court is satisfied about such seizure or attachment, **it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached is prosecuted in the Special Court for an offence under this Act.**

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,–

- (a) directing it to be sold if it is a perishable property and the provisions of section 525 of the Code of Criminal Procedure, Samvat 1989 shall, as nearly as may be practicable, apply to the net proceeds of such sale;
- (b) nominating any officer of the Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

8-D. Issue of show cause notice before forfeiture of the property–

No order under sub-section (2) of section 8-C shall be made by the Special Court –

- (a) unless the person holding or in possession of such property **is given a notice in writing informing him of the grounds on which it is proposed to forfeit such property and such person is given** an opportunity of making a

representation in writing within such reasonable time as **may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter;**

(b) if the person holding or in possession of such property establishes that he is a bona fide transferee of such property for value without knowing that such property has been so acquired.

8-E. Appeal. –

(1) Any person aggrieved by order of forfeiture under section 8-C may within one month from the date of the receipt of such order, appeal to the High Court.

(2) Where any order under section 8-C is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an 1 [order of the special court] has been made is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefore as if the property had been sold to the Government with reasonable interest calculated from the date of seizure of the property and such price shall be determined in the manner prescribed.”

60. The interplay of the aforesaid provisions, if put in simple words, would present the picture that an Investigating Officer seized of an investigation with respect to commission of offence/s under P C Act, Svt., 2006 by a named public servant can effect and order seizure of property with respect to which he has reason to believe that such a property, being subjected

to an investigation conducted by him, has been acquired by resorting to acts of omission and commission amounting to offence of criminal misconduct as defined in section 5 of the PC Act, Svt., 2006.

61. This act of seizure of property under investigation is then reportable from the end of the **Investigating Officer** to a **Designated Authority** within stipulated period of time prescribed with a factual report which occasioned the seizure/attachment of such a property.

62. This transition of act of seizure/attachment of property from **Investigating Officer** to **Designated Authority** is with a purpose to subject the seizure/attachment to confirmation or revocation at the end of the Designated Authority.

63. This exercise of authority of confirmation or revocation at the end of the **Designated Authority** is supposed to be a serious exercise envisaging an opportunity of being heard extended to a person whose purported property has suffered attachment or seizure.

64. Next tier of this exercise of seizure/attachment from the end of the **Investigating Officer** leading up to confirmation or revocation of seizure/attachment at the end of the

Designated Authority is that of an appeal available to an aggrieved person of order of confirmation or revocation of the seizure/ attachment of the property in question, meaning thereby even the Investigating Officer can be an aggrieved person on suffering revocation of seizure/attachment of property by the exercise of discretion of the designated authority and equally said aggrieved person can be the person whose property has suffered confirmation of seizure/ attachment by an order at the end of the designated authority.

65. For both the situations, a person aggrieved is vested with a right of appeal to the Special Court which also is called upon to exercise appellate authority either to confirm the order of attachment/seizure of the property or revocation of such order of the designated authority.

66. Outcome of such an appeal preferred by an aggrieved person, if results in confirmation of the order of the **Designated Authority** having confirmed the seizure/attachment, takes forward the exercise towards forfeiture in terms of sub-section 2 of section 8-C for doing which another tier of procedure is envisaged to be resorted to by the Special Court which is provided under section 8-D.

67. It is only by an interplay of exercise of jurisdiction under sub-section 2 of section 8-C and 8-D that the forfeiture

of a property dealt with by an Investigating Officer under sub-section 1 of section 8-B can take place thereupon a further right of an appeal is reserved in favour of an aggrieved person which appeal is to lie before the High Court.

68. In the case of such an appeal before the High Court, if the order of the Special Court declaring forfeiture of a property in reference is upheld, then the forfeited property is to be dealt with as per sub-section 2 of section 8-E.

69. Now, when this Court bears in mind the facts and circumstances of this case, then it is an inescapable fact that the forfeiture proceedings never took off as there was no confirmation accorded by the Special Court to the properties which were subjected to attachment by the **Investigating Officer** and confirmed by the **Designated Authority**.

70. Simultaneously, the investigation in the case had not resulted in presentation of any final police report for booking the public servant-Rakesh Kumar Pargal and/or other persons by reference to their complicity in the alleged acts of omission or commission vis-à-vis the property suffering under investigation by reference to section 5 of P C Act, Svt., 2006.

71. From the scheme of the provisions of section 8-B to section 8-E, it is very clear that the entire exercise envisaged

there under is not an independent exercise in itself divorced from the investigation process and its outcome so as to distance itself from the fate of the final investigation and sustain itself independently vis-à-vis the property in reference whether in the course of suffering a forfeiture or having suffered a forfeiture.

72. In the case of **Delhi Development Authority Vs Skipper Construction Company (P) Ltd. & another, 1996 AIR SC 2005**, the Hon'ble Supreme Court of India had the occasion of dealing with the concept of earning of properties by a person by smuggling or other illegal means and all such properties whether standing in his name or in the name of his relatives or associates bearing liability of forfeiture to the State and the entire concept was understood from resulting trust and equity. In paras **29 & 30** exposition to this effect has been made by the Hon'ble Supreme Court of India to the utmost point of clarity.

73. Before this Court proceeds further, this Court adverts to the judgment of the Hon'ble Supreme Court of India in the case of **Yogendra Kumar Jaiswal Vs State of Bihar and others, 2016 AIR SC 1474** in which the Hon'ble Supreme Court of India has very extensively dealt with the nature of

confiscation proceedings under the Prevention of Corruption Act, 1988 by reference to **Orissa Special Courts Act, 2006**.

74. In the case of **Mustafa Vs State of Uttar Pradesh, AIR 2019 SC 3949**, the essential nature of confiscation and the essence of proceedings as being independent or dependent came to be dealt with.

75. With respect to the maintainability of the writ petition for the nature of the relief being sought, this Court is vested with the judicial review jurisdiction to examine the criminal cases as has been held by the Hon'ble Supreme Court of India in the case of **M/s Pepsi Food Ltd. and another Vs Special Judicial Magistrate & others, AIR 1998 SC 128**.

76. When this Court examines the scheme of the provisions of section 8-B to 8-E of PC Act, Svt., 2006 in the light of the provisions of law dealt with by the Hon'ble Supreme Court of India in the case of **Yogendra Kumar Jaiswal** supra, the distinction comes out loud and clear that the exercise of seizure/attachment at the hands of the Investigating Officer then resulting in confirmation proceedings before the **Designated Authority** which definitely is not a judicial officer but an officer of the Establishment of the Vigilance Organization, is by no means adjudicatory in its essence as contrast to the confirmation proceedings before the Special

Court which is also two tier based, firstly of confirming the order of the **Designated Authority** and thereupon to take said confirmation towards forfeiture.

77. This nature of proceedings towards forfeiture has an end situation provided in section 8-F of the P C Act, Svt., 2006 which provides that in the event of acquittal of a person suffering prosecution for commission of offence under section 5 of the PC Act, Svt., 2006, the property which has suffered forfeiture is to be returned to him and if it is not possible for return of said forfeited property then to pay the price as per prevailing market rate, as if the property had been sold to the Government with reasonable interest calculated from the date of seizure of the property.

78. This aspect of section 8-E of the **P C Act, Svt., 2006** confirms that forfeiture of property under investigation in this case is not to be read as a confiscation of the property once for all and it is by this reference and relation that the fact of death of Rakesh Kumar Pargal, being the public servant under investigation by reference to **FIR No. 01/2020**, has to bring a closure to the entire proceedings otherwise borne out of the application and operation of section 8-B and 8-C of the **P C Act, Svt., 2006**.

79. Therefore, this Court has no iota of doubt that the entire canvass of proceedings under sections 8-B to 8-E of the **P C Act, Svt., 2006** is very essentially dependent upon the fact as to whether the offender booked for alleged commission of offence/s under section 5 of the PC Act, Svt., 2006 has been arraigned and put to trial or not.

80. Though, the Investigating Officer was not able to salvage the attachment proceedings of the properties by purported reference to Rakesh Kumar Pargal's alleged corrupt means as a public servant but even if it were to be assumed that the attachment proceedings in the case upto confirmation stage attained finality, with forfeiture part remaining to be adjudicated from the end of the court of Special Judge (Anti Corruption), Udhampur, even when the investigation has not reached to its logical end, the death of Rakesh Kumar Pargal- the accused, is supposed to bring the curtains down on the entire matter in view of the following three legal maxims, which are, "**crimina morte extinguuntur**" which means "*crimes are extinguished by death*", 2nd one "**poena ex delicto defuncti, haeres teneri non debet**" which means "*the heirs not to be penalized for the wrong or crime of the descendant*" and 3rd one is "**in haeredes non solent transire actiones quae poenales maleficio**" which means "*penal actions arising from anything of a criminal nature do not pass to heirs*".

81. In the light of the aforesaid, this Court is allowing both the writ petition by holding that **FIR No. 01/2020** and the investigation thereunder are no more sustainable because of death of Rakesh Kumar Pargal and the ancillary proceedings of attachment of the properties and the confirmation thereof are also rendered infructuous and, therefore, are to be restored to the original owners who are the petitioners of **WP(C) No. 290/2022** and the petitioners of **WP(C) No. 293/2022**. Attachment effected to all the properties is, thus, quashed.

82. The detailed judgment is following the order dated 15.12.2023 vide which the writ petitions were ordered to be allowed as are hereby being done.

83. ***Disposed of.***



सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
21.07.2026
Muneesh

Whether the judgment is speaking :	Yes / No
Whether the judgment is reportable :	Yes / No