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12/7/2020

Legal Drafting

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Care B4 Cure



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2020
[Under Article 32 of Constitution of India]

IN THE MATTER OF:

....PETITIONER

VERSUS

...RESPONDENT

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**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING ISSUANCE OF
APPROPRIATE WRIT DECLARING THE NOTIFICATION
DATED 25.06.1975 AS UNCONSTITUTIONAL AND FOR
COMPENSATION**

**To,
THE HON'BLE CHIEF JUSTICE OF INDIA,
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED**



1. Feeling aggrieved by the trauma and harassment faced by the Petitioner and her family including her deceased husband during the period June, 1975 upon the declaration of emergency and the ensuing order passed by the then President of India under Article 358 and 359 of the Constitution of India, 1950, by virtue of which the freedoms guaranteed under Article 19 of the Constitution and the rights of citizens to move any court for enforcement of their fundamental rights remained suspended till the withdrawal of emergency, the Petitioner is approaching this Hon'ble Court for the reliefs as prayed. The Petitioner and her husband, like many other citizens in the country during the relevant grave and dark period of our nation's history, were victims of the atrocities inflicted by the then government authorities and others under the colour of it, who plundered their business places and their homes. The Petitioner and her husband were compelled to leave the country for fear of being thrown into jail, for no justifiable reason, on the whims and wishes of government authority in a state where civil rights and liberties stood curbed. It is submitted that the then Government authorities, with

brutal and unfettered power ceased the businesses of the Petitioner's husband which he had built for 25 long years, with grit and toil of hard work. The Petitioner and her husband were threatened by the police authorities, their properties and valuables were forcefully taken away. In this manner, the Petitioner apprehended a serious threat to her life and that of her family and was made to live under constant fear for her life. Hereto annexed and marked as **ANNEXURE P/1 (Pg 3 1)** is Notification Dated 25.06.1975.

- 1 A. It is submitted that the Petitioner has not made any Representation to the Government in this regard.
2. That the Petitioner's husband succumbed to the pressure and died. Since then the Petitioner has been single-handedly facing all the legal proceedings initiated during the emergency period and which came to unjustifiably and unreasonably continued, and finally culminated and put an end to, upon the judgment and order dated 01.12.2014, passed by the Hon'ble Delhi High Court by holding the proceedings initiated under SAFEMA against Petitioner's husband as nullity, being bereft of any jurisdiction. Hereto

annexed and marked as **ANNEXURE P/2(Pg 32 to 47)**

is true copy of the judgement and order dated 01.12.2014 passed by the Hon'ble High Court of Delhi in W.P. (CrI) No. 1606/2008.

3. Even thereafter, the Petitioner was required to make several representations for the release of immovable properties which were plundered and forcefully confiscated by the then authorities. Since none of the representations made by the Petitioner were paid any heed, she was once again compelled to petition the Hon'ble Delhi High Court, seeking release of the immovable properties, by initiating appropriate proceedings before the Hon'ble Court. This chain of the fateful and unfortunate litigation finally concluded in the judgment and order dated 28.07.2020 passed by the Hon'ble High Court of Delhi wherein she has been partially compensated for the illegal possession of her immovable properties by the govt, in terms of rent. Hereto annexed and marked as **ANNEXURE P/3(Pg 48 to 49)** is true copy of the judgement and order dated 28.07.2020 passed

by the Hon'ble High Court of Delhi in W.P. (C) No. 10395/2019.

4. Nevertheless, it is submitted that the effect of this unconstitutional injustice has impacted her family for almost three generations. The Petitioner, during the relevant period was shunned by her relatives and friends because of the illegal proceedings initiated against her husband and her life as she knew it, was abruptly put to an end by the circumstances of the unconstitutional emergency. The Petitioner is presently 94 years old and seeks closure to the trauma of her lifetime, which still resonates in her mind. Even as on date, the movable properties including jewellery, artefacts, figurines, paintings, sculptures, and other valuables have still not been reinstituted to her family. The Petitioner is entitled to be compensated for the acts, deeds and things done under the authority of the concerned authorities and hence she is filing the petition for the reliefs as prayed.

5. The facts giving rise to the present petition are encapsulated herein below for the sake of ready reference-

i. The Petitioner is 94 years of age living with her daughter in Dehradun. The Petitioner was born in Moradabad, UP of nine siblings. Her father was a Headmaster in a Missionary School. The Petitioner was educated in Missionary schools and colleges where good values and ethics were emphasized. After getting her Bachelor-in-Education, she started her teaching career. In 1952, she was awarded a Rotary Scholarship from Georgia, USA where she did her Masters in School Administration. On returning to India, she taught in her alma mater Isabella Thoburn College in Lucknow, Jamia Millia University in New Delhi and American International School, New Delhi. The Petitioner was married in 1957 with Late Mr. H.K. Sarin who had a flourishing business Gold Arts in Karol Bagh and Sarin Gem House in Connaught Place.

ii. During the year 1957-1973, Late Mr. H.K. Sarin, husband of the Petitioner, had a flourishing business of Gold Arts in Karol Bagh. His customers were from high status families. He also supplied Jewellery to

shops in other states. Famous foreign jewellers such as Harry Winston, Horowitz & Sons, BvLgari, Kazanjians and many others were his regular clients. During the early sixties he opened his business in Akash Deep, Connaught Place. He was exporting diamonds and fine gems and had a flourishing business.

iii. In early 1960s, the husband of the Petitioner was appointed by the government as a jewellery appraiser. He was dealing with Royal family houses to evaluate their wealth for tax purposes. At that time the Royalties were selling their jewellery, arts and antiques to sustain themselves.

iv. It is submitted that a few minutes before the midnight of June 25, 1975, the President of India proclaimed Emergency under Article 352 of the Constitution. The order promulgating the Emergency was published in the Gazette of India, Extraordinary, on June 26, 1975.

v. It is submitted that by virtue of Article 358 of the Constitution freedoms guaranteed under Article 19 of

the Constitution restricting the power of the State to make any law or to take any executive action which the State to make any law or to take any executive action which the state would but for the provisions contained in Part III be competent to make or to take, remained suspended till the withdrawal of the Emergency proclaimed on June 2, 1975.

vi. After the declaration of Emergency, the President of India issued an order under Article 359 of the Constitution on June 27, 1975, suspending the right to move any court for the enforcement of fundamental rights conferred by Article 14, 21 and 22 of the Constitution.

vii. It is submitted that in the ensuing period several important statutory provisions were made including passing of the Defence of India (Amendment) Act, 1975, The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975 (No. 35 of 1975), The Maintenance of Internal Security (Second Amendment) Act, 1976 etc.

viii. The COFEPOSA (Amendment) Act provided as follows-

- (a) no detention order under the Act should be invalid or inoperative merely because some of the grounds of the order are vague, non-existent, not relevant or invalid for any reason;
- (b) no person detained under this Act shall be released on bail, bail-bond or otherwise;
- (c) the detention could be made for dealing effectively with the Emergency and in such contingency no grounds need be conveyed to the detenu.

ix. The MISA (Second Amendment) Act 1976 provided as follows-

- a. Re-detention of a person whose order has been earlier revoked,
- b. authorising Central Government to obtain details regarding detentions from the State Governments;
- c. making the grounds of detention as confidential and barring its disclosure to anyone.

x. The declaration of Emergency and the consequent suspension of the fundamental rights under Article 19, resulted in the suspension of the protection of Articles 14, 21 and 22 by the issue of the Presidential order in exercise of the powers under Article 359 of the Constitution and by the amendment of Article 352 invoking the satisfaction of the President final and conclusive and not liable to be questioned in any court on any ground and subject to the provisions of clause (2) taking away the jurisdiction of the Supreme Court or any other court to entertain any action on any ground regarding the validity of the declaration made by the proclamation of the President to the effect mentioned in clause (I) or to the continued operation of the proclamation, and restrictions imposed upon the authority of the courts to grant protection, against the infringement of basic human rights enumerated in Article 19 all protection against arbitrary action was taken away for the under duration Article of 14, the right Emergency of the fundamental right of equality guarantee against

deprivation of life and personnel liberty according to procedure established by law also stood suspended and the protection against arrest and de-tention could not be challenged before the courts. The right of free speech and expression, right to assemble peacefully, to form associations and unions to move freely throughout the territory of India reside and settle in any part of the territory of India; to acquire, hold and dispose of property and to practice any profession, or to carry on any occupation, trade or business, which were guaranteed under clause (1) of Article 19, could not thereafter be exercised.

^{xi} During the period 1974-1976, raids were conducted at the business premises of Late Shri H.K. Sarin and of the Petitioners on the suspicion of violations of the Customs Act. Late Shri Sarin was subsequently exonerated of any violations of the Customs Act.

^{xii} On 12.07.1975, Order was issued by the appropriate authorities under section Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1-974 for the detention of late Shri H.K. Sarin,

husband of the Petitioner, however, the detention order was never served on the Petitioner's late husband in his lifetime. It is further pertinent to mention here that during the Petitioner's husband's life time he has been exonerated in the proceedings instituted by various customs authorities which proceedings had to the knowledge of the Petitioner been closed as against the Petitioner's husband late Sh. S. K. Sarin. It is pertinent to mention here that these were the very proceedings on the basis of which the detention order was passed against the Petitioner's late husband.

xiii. The Petitioner submits that further notices were issued to her husband under SAFEMA demanding that he submits his source of income and means by which he acquired his various properties. The Petitioner's husband was hounded and the authorities got a warrant for his arrest. Her husband had to leave the country, leaving behind him his business, all his movable and immovable assets. Most importantly, the Petitioner and her children

were left alone to fend for themselves. Her relatives and close friends were scared to keep in touch with her for fear of being implicated in false cases. Her relatives also refused to talk to her on the phone. Policemen in civilian clothes kept surveillance on the Petitioner and at many times hounded her by barging into her home at any time of the day or night. Different agencies of the government also hounded her by entering her home and threatening her with death threats. They used to sit in her house till she gave them a few pieces of jewellery left in the house as all other artefacts were already illegally confiscated by the authorities. Ultimately, the Petitioner was compelled to leave her country of birth with her children and had to take refuge in the West. The Petitioner's children also suffered tremendous shock and sank into deep depression.

xiv.

Thereafter in the year 2000, the Petitioner's husband passed away. Even after his passing, the Petitioner received a show cause notice 29.03.2005 requiring the Petitioner to show cause as to why another

immovable asset being Flat No.811, Ansal Bhawan, K.G. Marg, New Delhi not be declared illegally acquired property.

- XV. The Petitioner challenged this show cause notice by filing writ petition no. 23717 of 2005. Vide counter affidavit of the authorities, it was brought on record that the detention order passed on 12.07.1975 was already revoked on 21.03.1977. Hence, the Hon'ble Court vide order dated 14.05.2007 was pleased to permit the Petitioner and her son to withdraw the said petition with liberty to make a representation for closure of proceedings in view of the revocation of the detention order. Accordingly, the Petitioner made representations, However, it was only vide order dated 01.12.2014, the Hon'ble Delhi High Court declared the said detention order as a nullity being initiated without jurisdiction. Even thereafter, the Petitioner and her sons were made to run from pillar to post for the release of the movable and immovable properties illegally seized and plundered by the directions of the then government.

xvi. It will shock the conscience of this Hon'ble Court to peruse through the list of movable articles which were looted and pilferage by persons under the colour of authority of the then government. The list of items have been enumerated in the schedule which forms part and parcel of the present petition. Hereto annexed and marked as **ANNEXURE P/4 (Pg 50 to 59)** is a true copy of the list of movable valuables plundered by the then officials of the government.

xvii. The Petitioner's son had also filed writ petition bearing 10395 of 2019 for release of the immovable properties in the Delhi High Court. It was only vide order dated 28.07.2020, on the basis of statement made on behalf of the Union of India, that it shall pay arrears of rent for the property at KG Marg, that the Hon'ble High Court has now required the authorities to pay the arrears of rent to the Petitioner and her sons at a specified monthly rate.

xviii. It is submitted that considering the indiscriminate, high handed and unauthorised power of arrest and issue of detention orders being issued and effected on

innocent persons and the ensuing mayhem in the country, in exercise of the powers under Section 3 of the Commissions of Enquiry Act, 1952, the Central Government published a notification dated 28.05.1977 appointing a Commission of Inquiry to enquire into several aspects of allegations of abuse of authority, excesses and malpractices committed and action taken unauthorizedly in the wake of the emergency. This commission was set up under the Chairmanship of Shri. J.C. Shah, Retd. Chief Justice of the Supreme Court of India.

xix.

After a comprehensive enquiry in the terms of reference set out in the notification the Commission submitted its report in 1978. The Commission concluded that as borne out by the records of the government and depositions of several responsible government servants dishonesty and falsehood had become almost a way of official life during the emergency period. The report was concluded and it was found that it was not a legally permissible emergency which could have been declared according

to the law in force. The acts done at that point of time were wholly unauthorised and not supported by any law. The conclusive remarks in Clause XIII of the Third Final Report of Shah Commission of Enquiry declared in detail the various aspects which clearly indicates that the entire event was a travesty of justice and a fraud on the constitution of India. The Petitioner would crave leave to rely upon the findings of the Commission of Enquiry.

- X. It is submitted that vide the 44th Constitutional Amendment, Article 352 prior to the said amendment which was vague and arbitrary was modified in order to make it more transparent and increase the accountability of any ruling govt during a national emergency. Under the present form, the president can only proclaim an emergency when he/she has a confirmation of the crisis situation by the Prime Minister and the cabinet presented to the President in the written form. Unlike in 1975, it is no longer possible for the prime minister to unilaterally take a decision about the proclamation of an emergency

without any written explanation and transparency. Thus, although the country has graduated to the formation of stronger democracy, the sufferings and trauma of the Petitioner, her family and uncounted others has gone unacknowledged and uncompensated. The Petitioner is still seeking closure of her anguish and the ordeal which her family has suffered in her lifetime.

xxi.

The loss of movable assets and immovable properties which she has detailed in the schedule annexed to the petition only reflect her tangible loss and does not even begin to describe the dark days. The Petitioner, in a genuine desire to bring about an end to the undemocratic nightmare, infamously known as ‘the emergency’ seeks a peaceful closure, that can be brought only by an acknowledgment and declaration by the highest court of justice of the country in which citizens repose the highest level of confidence and faith, that the said incident was unconstitutional. Hence, this petition is being filed on the following grounds.

GROUND

- A. Because the ordeals of the emergency and destruction caused during the said period are being suffered till date by the Petitioner. The Petitioner and her family were made to run from pillar to post for the past 35 years to vindicate their rights and restore their properties.
- B. Because even after passing away of the Petitioner's husband in the year 2000, the Petitioner and her family were compelled to continue their legal battle against the illegal and mala fide acts. The Petitioner in 2005 had received a show cause notice under SAFEMA for the alleged activities relating to her husband's business in 1975 against which proceedings culminated as recently as 2020.
- C. Because the Respondent and the then ruling govt. has abused and misused the process of law by taking away the livelihood of the Petitioner's husband and allegedly framing him under provisions of COFEPOSA and SAFEMA. The consequences of the same are still suffered by the

Petitioner and her family as they lost their precious years of youth in defending and fighting the legal battles.

D. Because it is a matter of record that the claims of the Petitioner and her family have now been vindicated by virtue of the judgment and order dated 28.07.2020 passed by the Hon'ble High Court of Delhi vide order dated 28.07.2020 passed in WP (C) 10395 of 2019 wherein the authorities have been directed to pay rent to the Petitioner w.e.f April, 1999 against the properties belonging to late husband of the Petitioner which were illegally attached by the Respondent and are still in their possession. It is submitted that vide said order, the Hon'ble High Court has recognized the illegalities being committed by the Respondent and victimization of the Petitioner and her family.

E. Because the presidential order dated 25.06.1975 is void and unconstitutional and the continuation of the same was a fraud on the constitution. The emergency declared under Article 352 of the Constitution was due to threat of external aggression and in as much as the Presidential order was not in furtherance of the object for which the

emergency was declared, there was no nexus between the impugned presidential order and declaration of emergency.

F. Because vide counter affidavit in reply dated 18.12.2006 before the Hon'ble Delhi High Court in W.P. (C) No. 23717 of 2005, for the first time it was brought on record the fact that the detention order dated 12.07.1975 passed against Late H.K. Sarin was revoked on 21.03.1977 itself, i.e. on the date of lifting of emergency. However, the consequences of the same are suffered by the Petitioner and her family till date in form of loss of love and affection, loss of livelihood, ongoing litigations, illegal attachment of properties etc.

G. Because the satisfaction postulated by clause (1) of Article 352 of the Constitution is the subjective satisfaction of the President. The said subjective satisfaction has to be based on some relevant material placed before the President by the Prime Minister and/or the Council of Ministers headed by the Prime Minister. It is submitted that from the perusal of the J. C. Shah Commission Report, it is apparent that the material on the basis of which the satisfaction of the President was said to have been arrived at was contained

in a white paper issued by the Central Government on 22.07.1975 and a statement made by the Prime Minister in Parliament. There was no other reason for declaring emergency except what was already placed before the Parliament on early occasions, i.e. the white paper and the statement of the Prime Minister. The said Commission has deduced that it can be assumed that the only grounds on which the President based his subjective satisfaction was the above said two pieces of evidence which were neither sufficient nor satisfactory for proclaiming emergency.

H. Because the Commission has arrived at a finding and has recorded that the important functionaries in the Home Ministry, Cabinet Secretariat and the Prime Minister's Secretariat, who should have been consulted before such an important decision was taken, did not know anything about the proclamation of Emergency till very late and some of them learning about it only on the morning of June 26, 1975. According to Shri B. D. Pande, cabinet secretary, the need for the declaration of emergency or the situation in the country warranting any such declaration had not

figured in any of the Cabinet meetings preceding June 26, 1975.

I. Because some of the special features of the proclamation of Emergency, as gathered from the official records and as concluded by the Shah Commission Report, are as follows:

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- i. on the economic front there was nothing alarming. On the contrary, the whole-sale price index had declined by 7.4 per cent between December 3, 1974 and the last week of March 1975 as per the Economic Survey 1975-76, a Government of India Publication
- ii. on the law and order front, the fortnightly reports sent by the Governors of various States to the President of India and by the Chief Secretaries of the States to the Union Home Secretary indicated that the law and order situation was under complete control all over the country;
- iii. the Home Ministry had received no reports from the State Governments indicating any significant deterioration in the law and order situation in the

period immediately preceding the proclamation of Emergency;

- iv. the Home Ministry had not prepared any contingency plans prior to June 25, 1975, with regard to the imposition of internal Emergency;
- v. the Intelligence Bureau had not submitted any report to the Home Ministry any time between 6th of June and 25th of June, 1975, suggesting that the internal situation in the country warranted the imposition of internal Emergency;
- vi. Because the Home Ministry had not submitted any report to the Prime Minister expressing its concern or anxiety about the internal situation in the country. Till after the Emergency was lifted, the Home Ministry did not have on its file the copy of the communication which was sent by the Prime Minister to the President recommending imposition of the Emergency.

J. Because there was an Emergency already declared and was in operation since December 1971. That Emergency had never been withdrawn. The Defence of India Rules were in operation as promulgated under the Defence of

India Act enacted as an aftermath of the Emergency. The provisions of Article 358, by which the fundamental rights under Article 19 were suspended were also in operation. The Constitution did not contemplate the issue of an emergency upon an emergency already existing nor prevented the courts from entertaining any challenge to the declaration of the additional emergency. But the provisions of the Constitution were amended by the 39th Amendment of the Constitution Act which prevented a challenge from being raised. But even when there was already in existence and in operation an Emergency no powers could be exercised to declare another Emergency and the original Rules, i.e. Defence of India Rules were modified as Defence and Internal Security of India Rules, 1975.

K. Because according to the guidelines issued by the Finance Ministry, the COFEPOSA was intended to be applied for dealing with the cases of smugglers, foreign exchange racketeers or such foreign exchange violations as were having a nexus with smuggling. It was not intended to be resorted to for dealing with minor infractions under the

Foreign Exchange Regulation Act. It is submitted that the Petitioner's husband had no nexus whatsoever either with smuggling or with foreign exchange racketeering. There was nothing on record also to show their connection in any way with such activities.

- L. Because the demolitions and raids in Karol Bagh were done at the instance of Late Shri Sanjay Gandhi. It has appeared on record that among other considerations, the political affiliation of the shopkeepers to a party opposed to the Congress was one of the deciding factors which impelled Late Shri Sanjay Gandhi to order the demolition of the structures in Karol Bagh. The said demolitions, raids and plundering was illegal, the responsibility for which must rest entirely with Late Shri Sanjay Gandhi and Shri B. R. Tamta (Former Commissioner of Municipal Corporation of Delhi).
6. That in view of the aforesaid facts, the petitioner has approached this Hon'ble Court by way of this petition as there is no other equally efficacious alternate remedy available to the petitioner for the relief prayed for in this petition.

7. The petitioner has not filed any other appeal or petition impugning the action as in the present petition either in this Hon'ble Court or in any other Court in India.

PRAYER

In aforesaid facts & circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

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- (i) Issue an appropriate writ declaring that the proclamation of emergency vide notification dated 25.06.1975 was wholly unconstitutional and actions pursuant to the same are illegal and unjustifiable.
- (ii) The Petitioner may kindly be compensated to the tune of Rs. 25 crores to be recovered from the concerned authorities as having actively participated in the unconstitutional acts as above.
- (iii) Pass any such further and other orders as may be deemed just and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER BEING DUTY BOUND SHALL EVER PRAY

DRAWN BY:

FILED BY:

NEELA GOKHALE

**ANANNYA GHOSH
ADVOCATE ON RECORD
FOR THE PETITIONER**

**NEW DELHI
FILED ON: 22 SEPTEMBER 2020**

