

PETITIONS UNDER CONSTITUTIONAL LAW

WRITS

Meaning and evolution of the concept of Writs:

The term 'writ petition' in its general connotation means a Petition filed before the competent Courts, having prerogative powers, when some special and inherited rights of the people are infringed by the government or its officials.

In the common laws of English this term is well settled as a 'prerogative writ' which means a writ special associated with then king. It resembled the extraordinary authority of the Crown/Court. In English prerogative writs were issued only at the suit of the king but later on it was made available to the subject also.

Habeas Corpus

Habeas Corpus is a writ requiring the body of a person to be brought before a judge or Court. In other words, it is prerogative process for securing the liberty of the subject which affords an effective means of immediate release from unlawful unjustifiable detention whether in prison or in private custody. It is an ancient supreme right of the subject. Its object is the vindication of the right of the personal liberty of the subject. The High Courts and The Supreme Court have got a very wide power of protecting the liberty of subjects, under Art.226 and Art.32 respectively of the Constitution. These powers are to be exercised on certain fixed judicial principles and not in an arbitrary manner. The jurisdiction can be exercised if the Court is satisfied that the detention is illegal or improper, where the Court can also embark upon an inquiry as to whether the enactment under which a person is detained is proper or not. A proceeding of habeas corpus is essentially of a civil character, and is concerned with the personal liberty of a citizen. However, the power is exercised on the criminal side of the High Court's appellate jurisdiction. The High Courts and the Supreme Court exercise this power when satisfied that the matter is of urgency, and no other legal remedy is available.

An application for *habeas corpus* may be made by any person interested in the liberty of the detenu without unreasonable delay; and it must be supported by an affidavit of the petitioner. Ordinarily a rule nisi (to show cause) is issued by the Court in the first instance. It is not open to Court to go behind the reasons given by Government for the detention, and it must see the motive of the impugned law and the *bonafide* of the Government. If the impugned detention has been induced by *malafide* and some other strenuous reasons and not for bonafide cause, it shall be quashed and the individual shall be set at liberty.

Mandamus

It is high prerogative writ of a most extensive remedial nature. The Supreme Court and high court have power respectively under Article 32 and Article 226 of the Indian constitution to issue this writ in the form of a command directing any person holding public office under the government or, statutory bodies or, corporation or, to an inferior Court exercising judicial or

quasi-judicial function to do a particular act pertaining to his office or duty and which the court issuing the writ considers to be the right of the petitioner and is in the interest of justice. It is not restricted to persons charged with judicial or quasi-judicial; duty only.

It is issued only when there is a specific legal right, but not specific legal remedy to enforce that right. It lies for restoration, admission and election to office of a public nature so long the office is vacant. It may, also, lie for the delivery, inspection and production of public books, papers and documents provided that the petitioner has a direct tangible interest in such books, paper and documents. It lies for the performance public duties which are not discretionary and compel public officials to perform such public duties.

Mandamus will not be issued when any alternative remedy by way of appeal or any other remedy under any other statute is available. Article 32 is limited to the enforcement of fundamental right of part III of the Constitution only.

Certiorari

The writ of *Certiorari* may be issued to any judge, Magistrate or person or body of person or authority vested with judicial or quasi-judicial functions. An order of *Certiorari* is an order directing the aforesaid authorities and requiring them to transmit the record of the proceedings in any cause or matter to the High Court to be dealt with there. It may be issued when the decision complained is of an authority having the legal duty to act judicially or quasi-judicially, and the authority has either no jurisdiction, or there is an excess of jurisdiction. Mainly it is issued for quashing decisions only.

Prohibition

The writ of prohibition is an order directed to an inferior Court or tribunal forbidding such Court or tribunal from continuing with the proceeding of any cause or matter. It is an appropriate writ 'to a tribunal which threatens to assume or assumes a jurisdiction not vested in it, so long as there is something in the proceedings left to prohibit.'

The difference between a writ of *Prohibition* and *Certiorari* is that the former is issued to restrain a tribunal from doing an act before it is actually done, while the latter may be issued during the course of the proceeding of an act and even after the act is done and the proceeding is concluded. Both can be issued to the person, or body, or tribunal if charged with judicial or quasi-judicial duties.

Quo Warranto

It is a writ questioning a right of a person holding an office of a public nature, and direct him to show an authority under which he is holding such office or exercising the right. In older days it lay against the crown who claimed or usurped any office, franchise or liberty for holding an enquiry by what authority he support his claim. Now, it may be issued any person holding the office of a public nature on the application of any person without alleging the violation of his any specific right.

Any member of the public acting in good faith and whose conduct otherwise did not disentitle him to the relief can apply to the High Court for this writ. For instance, any registered graduate of any university can apply for the instance of this writ against any member of University Syndicate or Executive Council or Academic Council or any such other statutory body of that University. Likewise, a petition may lie against the Speaker, chairman or the parliament of state legislation or any other statutory or local bodies. If the opposite party fails to support his claim, he will be ousted from the office and may be ordered to pay fine and cost of the petition.

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2016

IN THE MATTER OF :

X _____ S/o _____ R/o _____ PETITIONER

VERSUS

Municipal Corporation of Delhi,
Through Its Commissioner

... RESPONDENT

**WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA
FOR ISSUANCE OF PREROGATIVE WRIT OF MANDAMUS
OR ANY OTHER APPROPRIATE WRIT**

Respectfully showeth :

1. That the petitioner is a citizen of India residing at _____. The respondent is Municipal Corporation of Delhi having their office at Town Hall, Chandni Chowk, Delhi.

BRIEF FACTS :-

2. That the petitioner is aggrieved by the illegal appointments of daily wage workers by the M.C.D. office in defiance of Notification No. MCD/LF/01-103 dated 1.2.2014 which requires the M.C.D. to appoint only those person as Daily wage worker who are below the age of 30 years as on 01.10.2014. The said Notification was issued after it was duly approved.
3. That the petitioner is of 27 yrs of age and was working as a daily wage worker, when on 1.12.2014 his services were terminated without notice/prior intimation. The Petitioner during his service worked to the satisfaction of his superiors. The respondent has appointed Sh. Ompal, Sh. Ram and Smt Maya in defiance of the said notification M.C.D./LF/01-/03 at 01.02.2014 as all the three person namely Om Pal, Sh. Ram and Smt. Maya are more than 30 years of age as on 01.10.2014. The about named persons were appointed in utter disregard of Notification. The respondent, however, removed the petitioner from service although petitioner met the requirements.. That the Petitioner made representation to the respondent vide letter dated 1.12.2014, 2.1.2015 and also met the commissioner personally and apprised them of his grievance, however nothing materialized .
4. That in spite of oral and written representations the respondent have not cared to act and are maintaining stoic silence on the whole issue.
5. That the petitioner have thus approached the Hon'ble court on amongst others the following grounds

GROUND:

- (a) Because the action of the respondent is contrary to law and good conscience.

- (b) Because the action of the respondent is arbitrary, unreasonable, irrational and unconstitutional.
- (c) Because respondent have no right to play with the career of the petitioner.
- (d) Because the petitioner was removed from job inspite of the fact that he was below age and fulfilled all requirements.
- (e) Because respondent appointed. Sh. Ompal, Sh. Ram and Smt Maya despite their being overage and not meeting requirements of Notification No. MCD/LF/01-103 dated 1.2.2014.
- (f) Because the action of the respondent is bad in law
- (g) That the Petitioner craves, leave of this Honorable Court to add, amend, alter the grounds raised in this petition.
6. That the cause of action in present case arose on 1.2.2014 when the respondent brought out the Notification No. MCD/LF/01-103 dated 1.2.2014., it further arise when on 1.12.2014 the petitioner was removed from job inspite of the fact that he was below age and fulfilled all requirements, it further arose when respondent appointed. Sh. Ompal, Sh. Ram and Smt Maya despite their being overage and not meeting requirements of Notification No. MCD/LF/01-103 dated 1.2.2014, it further arose when representations were made to respondent orally and in writing on 1.12.2014, and 2.1.2015. The cause of action further arose when respondent did not act inspite of the fact having brought to their notice. The cause of action is continuing one.
7. That the Petitioner has no other alternative efficacious remedy except to approach this Hon'ble Court by way of this writ petition
8. That the petitioner has not filed any other similar writ petition either before this Hon'ble Court or before the Supreme Court of India.
9. That there has been no undue delay in filing of this petition.
10. That the honorable court has territorial jurisdiction to entertain the writ petition.
11. That the requisite court fee of Rs. 50/- has been affixed on this petition.

PRAYER :

The petitioner most humbly prays that this Hon'ble Court may be pleased to :-

- (a) issue appropriate writ in the nature of mandamus or any other appropriate writ directing the Respondents to cancel the illegal appointment made in disregard of Notification No. MCD/LF/01-103 dated 1.2.2003 : and
- (b) issue necessary directions to appointment of petitioner and
- (c) issue any other further order/orders or direction/directions as this Hon'ble Court may deem fit and appropriate no the facts and the circumstances of this case.

FOR THIS ACT OF KINDNESS THE PETITIONER ABOVENAMED SHALL EVER PRAY.

Delhi

Date _____

THROUGH

PETITIONER
ADVOCATE

[NOTE : The petition will be supported by an affidavit]

WRIT PETITION (CRL.) FOR ENFORCEMENT OF FUNDAMENTAL RIGHT**IN THE HIGH COURT OF DELHI, AT NEW DELHI****WRIT PETITION (CRL.) NO. _____ OF 2016**

IN THE MATTER OF:

Mr. _____

s/o Sh. _____,

r/o _____

.....Petitioner

Versus

1. Union of India,
Through
Secretary to the Govt. of India
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-11001
2. The Joint Secretary (PITNDPS),
to the Government of India,
Ministry of Finance,
Department of Revenue,
Room No.26, Church Road,
R.F.A. Barracks,
New Delhi -110001
3. Director General,
Directorate of Revenue Intelligence
Delhi Zonal Unit, B-3 & 4, 6th Floor,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110003Respondents

PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 SEEKING ISSUANCE OF A WRIT OF MANDAMUS AND/OR ANY OTHER APPROPRIATE WRIT, ORDER AND/OR DIRECTION IN THE NATURE THEREOF, THEREBY DIRECTING THE RESPONDENTS TO PLACE ON RECORD THE DETENTION ORDER DATED 10.09.2013 PASSED IN RESPECT OF THE PETITIONER ISSUED UNDER SECTION 3(1) OF THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988 BY THE RESPONDENT NO.2, ALONGWITH GROUNDS OF DETENTION AND RELIED UPON DOCUMENTS AND SIMILAR MATERIAL IN

RESPECT OF OTHER CO-ACCUSED PERSONS AND FURTHER SEEKING ISSUANCE OF A WRIT OF CERTIORARI AND/OR ANY OTHER APPROPRIATE WRIT, ORDER AND/OR DIRECTION IN THE NATURE THEREOF, THEREBY QUASHING THE SAID DETENTION ORDER PASSED AGAINST THE PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That, vide the present petition the petitioner is challenging detention order dated 10.09.2013 issued under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short Act) by the respondent no.2 against him, in respect of which he has recently come to know, when some officials, claiming themselves to be police officials, visited his abovementioned premises in the first week of this month for its execution. It is worth mentioning here that similar detention orders were issued against even other co-accused persons, namely X and Y, which have been revoked on the recommendation of the Advisory Board, who did not find sufficient grounds for detention of those respective detenus. Copy of such a detention order bearing No. U-11011/1/2012- PITNDPS dated 10.09.2013 qua Mr. X is enclosed herewith as Annexure A. Copies of the grounds of detention passed in support of that detention order alongwith the list of relied upon documents are also enclosed herewith as Annexures B & C respectively.
2. That the allegations, as revealed from the grounds of detention in respect of his said co-accused, are that the petitioner was involved with other accused persons, in the activities of acquiring, possessing, hoarding, selling and exporting NDPS items. It is respectfully submitted that all the allegations as made in the grounds of detention are false, frivolous and motivated ones, which is also apparent from bare reading of grounds of detention and the documents, said to be relied upon at the time of passing the impugned detention order, since even as per those allegations the petitioner has not committed any offence whatsoever under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short Act). It is further submitted that in order to falsely implicate the petitioner in the matter he was forced /coerced to make certain involuntary statements under section 67 of the Act, which have been duly retracted. Not only this, it is respectfully submitted that, the petitioner is made to understand that, even other co-accused were forced/coerced to make certain involuntary and incorrect statements from which even they have retracted at the first available opportunity.
3. That, the petitioner's case is fully covered by the exceptions, as laid down, by the Hon'ble Supreme Court in Alka Subhash Gadia's case. It is respectfully submitted that recently the Hon'ble Supreme Court in Deepak Bajaj vs. State of Maharashtra, 2010 (4) SCC (Cri) 122 has summarized the law on the issue as under:
 - (a) Five grounds mentioned in Alka Subhash Gadia case, on which Court can set aside detention order at pre-execution stage, are illustrative and not exhaustive. It was also reiterated that judgment of a court is not to be read mechanically as a Euclid's theorem nor as if it were a statute, hence, cannot be constructed as such.
 - (b) It was held that entertaining petition against preventive detention order at pre-execution stage should be an exception and not a general rule. However, if a person

against whom a preventive detention order is passed comes to court at pre-execution stage and satisfies the court that such order is clearly illegal, there is no reason why the court should stay its hands and compel him to go to jail even though he is bound to be released subsequently because of illegality of such order. If a person, is sent to jail, then even if he is subsequently released, his reputation may be irreparably tarnished. Liberty of a persona is a precious fundamental right under article 21 and should not be lightly transgressed.

(c) Non-placement of retractions of confessional statement and other relevant material before detaining authority vitiates detention order even at pre-execution stage. Hence, on facts, it was held that, as relevant materials were not placed before detaining authority, it vitiated the detention order.

4. That, therefore, under these circumstances, it is respectfully submitted that the impugned detention order dated 10.09.2013 is highly illegal and a nullity in the eyes of law and the same is liable to be quashed on the following amongst other grounds which are without prejudice and in addition to each other.

GROUND

- A. Because though the impugned detention order was passed on 10.09.2013, but till date the same has not been executed, despite the fact that throughout this period the petitioner was available at home and was attending all his daily routine activities. Not only this, it is further respectfully submitted that, the petitioner was regularly appearing before the Trial Court in the prosecution proceedings, launched at the instance of the sponsoring authority. It is submitted that the long and undue delay in execution of the impugned detention order creates doubt about the genuineness qua subjective satisfaction of the detaining authority in detaining the petitioner preventively. Therefore, in view of the exceptions of the Alka Subhash Gadia's case the impugned detention order is liable to be quashed. Copies of the relevant order sheet of the Trial Court in prosecution proceedings is enclosed herewith as Annexure D.
- B. Because the petitioner says and submits that the alleged incident took place on 23/24.10.11, however, no detention order was passed till 10.09.13, which clearly shows that there has been long and undue delay in passing the impugned detention order, which has snatched the nexus between the purpose of detention and the allegations, as made in the grounds of detention. Therefore, it is apparent that the detention order has been passed on stale incident and on this ground also the impugned detention order is liable to be quashed, more particularly when similar detention orders under similar circumstances have already been revoked by the respondent no.2, on the recommendation of the Advisory Board, who did not find sufficient cause for issuance of those detention orders. Therefore, in view of the exceptions of the Alka Subhash Gadia's case the impugned detention order is liable to be quashed on this ground also.
- C. Because the petitioner says and submits that a bare perusal of the enclosed grounds of detention clearly reflect that Sponsoring Authority did not place before the Detaining

Authority following mentioned documents, which were very vital and material since they could have influenced the mind of the Detaining Authority one way or the other at the time of passing the impugned detention order. The Detaining Authority having failed to apply its mind to those documents rendered the impugned detention order illegal and void. These documents are as under:

It is submitted that in case these documents were placed before the Detaining Authority they were relied upon material and as such ought to have been part of the list of relied upon documents, which is not so. It is worth mentioning here that while demanding those documents, being relied upon documents, petitioner's co-accused/detenu had raised this ground in his representation dated 05.10.2013 (Annexure E). However, vide the memorandum dated 13.11.2013 (Annexure F), that representation was rejected casually and mechanically, which clearly substantiates abovementioned contention of the petitioner that the impugned detention order has been rendered illegal and void on account of non-placement of those documents. Therefore, in view of the exceptions of the Alka Subhash Gadia's case read with above mentioned Deepak Bajaj's judgment, the impugned detention order is liable to be quashed on this ground also.

- D. Because similar detention orders passed in respect of other co-accused persons in the matter have been found to be not issued for sufficient cause by the detaining authority and, therefore, were revoked at the instance of the Advisory Board, consisting of three Hon'ble Judges of this Hon'ble Court, by the respondent no.2. The petitioner is made to understand that the ground for revoking the detention orders in those cases was delay in passing the same. Under these circumstances, it is most humbly and respectfully submitted that, if the detention order passed against the petitioner also suffers from the same infirmity, no useful purpose would be served by compelling him to go to jail, even though he is bound to be released subsequently because of illegality of such order. Therefore, it is respectfully prayed to this Hon'ble Court that the respondents may kindly be directed to place on record all the material pertaining to this case, including the detention orders and their consequence in respect of other co-accused persons, so that the true facts may be brought to the notice of this Hon'ble Court. Therefore, on this ground also the impugned detention order may kindly be quashed.
- E. Because the petitioner / detenu says and submits that there is no nexus between the purpose of the detention and the allegations as made in the grounds of detention which clearly shows non application of mind on the part of detaining authority. Therefore on this ground also the impugned detention order is liable to be quashed.
- F. Because since the date of the passing of the impugned detention order, which is for a period of one year only, the petitioner has not come to the adverse notice of any law enforcing authority. Therefore, under these circumstances, purpose of the said detention order has already been served and nothing would be achieved by sending the petitioner into custody pursuant to the impugned detention order, which was passed about more than 1 ½ year back for his detention for a period of one year. It is respectfully submitted that, under these circumstances, purpose of passing the

impugned detention order is no more preventive. Therefore on this ground also the impugned detention order is liable to be quashed.

- G. Because the petitioner/ detenu is a poor person and has clean antecedents. Even in this case he has been falsely implicated at the instance of the persons, inimical to him. It is respectfully submitted that he is sole bread earner of his family, which includes his old ailing parents, wife and minor children. It is further submitted that grave injustice has been done to the petitioner by executing the impugned detention order, which is even otherwise very draconian in nature, being violative of principles of natural justice. It is submitted that, the impugned detention order is unconstitutional. It is further respectfully submitted that initiation of mere prosecution proceedings were sufficient to prevent the petitioner from indulging in the alleged prejudicial activities. Therefore, on this ground also the impugned detention order is liable to be quashed.
- H. Because it is enjoined upon the respondents to show to this Hon'ble Court that the impugned detention order is in conformity with the provisions of Constitution and is not illegal, failing which they would render the impugned detention order illegal and void.
- I. Because it is further enjoined upon the respondents to show to this Hon'ble Court that all the bare minimum safeguards, available in such kind of cases, seeking detention of the persons without trial, have been followed, failing which they would render the impugned detention order illegal and void.
- J. Because the impugned detention order is not only contrary to the facts of the case but also contrary to the settled principles of law.

5. That, the annexures annexed with this petition are true copies of their originals.
6. That, no similar petition has been filed either before this Hon'ble Court or any other Court including the Hon'ble Supreme Court of India.
7. That, the petitioner has no other efficacious remedy other than to file the present petition.

PRAYER

In view of foregoing it is most respectfully prayed that:

- (i) a writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby directing the respondents to place on record the abovementioned detention order, issued under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short Act) by the respondent no.2 against the petitioner dated 10.09.2013 alongwith the grounds of detention and relied upon documents, besides the similar material in respect of other co-accused/ detenus, who were detained earlier on the same set of facts and circumstances; and

(ii) further a writ of certiorari and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby quashing the abovementioned detention order dated 10.09.2013, passed by the respondent no.2; and/or

(iii) any other order, as may be deemed fit and proper under the facts and circumstances of the case may also be passed in the matter in favour of the petitioner and against the respondents.

New Delhi

Dated:

Through:

Petitioner

Advocates

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2016**

(From the Impugned Judgment and Final Order dated 19.12.2014 passed by the High Court for the State of Punjab and Haryana at Chandigarh in C.M. No. 8507-C-OF 2002 in R.A.No. 14-C of 2002 in R.S.A. No. 2543 of 2001).

IN THE MATTER OF:

Manohar

....

EXPECTED PETITIONERS

VERSUS

Improvement Trust Phagwara.

Distt. Kapurthala, Punjab

....

EXPECTED RESPONDENT/ CAVEATOR

CAVEAT UNDER ORDER XV OF THE SUPREME COURT RULES 2013

To,
The Registrar
Supreme Court of India
New Delhi

Sir,

Let nothing be done in the above mentioned matter without notice to the undersigned. The parties as arrayed in the High Court are the same in this Hon'ble Court.

Filed on _____

Yours faithfully

Advocate-on-Record for Caveator

Article 136 Of the Constitution of India vests the Supreme Court with the power to grant Special leave to appeal against any decree, order or judgement in any cause or matter passed by any court or tribunal in the country.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ORDER XXI OF THE SUPREME COURT RULES 2013

SPECIAL LEAVE PETITION (CIVIL) No. OF 2016

(Arising out of Judgment and order dated 14.12.2015 passed in Writ Petition No. 5427 of 2004 by Hon'ble High Court of Judicature of Bombay Bench at Aurangabad)

Between	Position of the Parties	
	In the High Court	In this court
Vasant S/o Shankar Bhavsar Age: Major, Occu: Residing at & Post Faijpur, Taluka Yawal, Dist: Jalgaon. ...	Petitioner	Petitioner
AND		
1. D ____ S/o _____ ... R/o _____, ... Taluka: Bhusawal, Dist: ____	Contesting Respondent	Contesting Respondent
2. H ____ S/o _____, ... R/o _____, ... Taluka: Bhusawal, Dist: ____	Contesting Respondent	Contesting Respondent
3. C ____ S/o _____ ... R/o _____ ... Taluka: Bhusawal, Dist: ____	Contesting Respondent	Contesting Respondent
4. P ____ S/o _____ R/o: _____, ... Dist: _____...	Contesting Respondent	Contesting Respondent

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF
CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice of India and His
Companion Justice of the Supreme Court of India.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the present petition has been filed seeking special leave to appeal in the final judgment and order dated 14.9.2012.201508 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ Petition No.5427 of 2004 titled "Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors." which was dismissed by the Hon'ble High Court.

2. QUESTIONS OF LAW:

That the following questions of law arise for consideration herein:

a) Whether in the facts and circumstances of the case the Hon'ble High Court was justified in dismissing the Civil Writ Petition

3. Declaration in terms of Rule 4 (2):

That the Petitioner states that no other petition for special leave to appeal has been filed by him against the judgment and order impugned herein.

4. Declaration in terms of Rule 5:

The Petitioner states that the Annexures filed along with the special leave petition are true copies of the pleading's and documents which formed part of the records of the case in the court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

That the special leave to appeal is sought on the following grounds:

I) Because the High Court had erred in passing the impugned judgment.

II) Because the High Court could not have allowed the errors to prevail by dismissing the writ petition.

III) Because the impugned judgments and orders of Hon'ble High Court and of Maharashtra Revenue Tribunal, Mumbai, dated 24.10.1997, of the Sub-Divisional Officer, Bhusawal dated 31.3.1997, of Tehsildar and Agricultural Lands Tribunal, Yawal, dated 1.10.1996 suffer from error apparent on the face of record.

IV) Because the reasoning of the authorities mentioned above that the will executed by Vishnu on 7.1.1968, the original tenant and owner under the Bombay Tenancy Act; and the registered Hakka Sod Patrak dated 18.12.1981 executed by Digambar S/o Vishnu do not come in the definition of transfer as envisaged in Section -43 of the Bombay Tenancy Act, is unsustainable in law.

V) Because with respect to the Authorities below that the incidents of transfer mentioned in Section 43 of Bombay Tenancy Act viz. sale, Gift, Exchange, mortgage, lease, assignment or partition are not the only incidents of transfer to be considered in reference to Section 43 of the Act but they are only mentioned by way of examples. It does not mean the

other incidents of transfer like will or Hakka Sod Patrak do not amount to transfer and are not to be considered by the authorities under the Bombay Tenancy Act.

VI) Because the ground No. V above is further supported by other provisions of Bombay Tenancy Act. For example Section 32-R lays down that purchaser U/s. 32 of the Act is to be evicted if he fails to cultivate land personally. Section 43 of the Act lay down restrictions on the purchaser not to transfer the purchased land under the Act without the sanction of the Collector. Section 43 (2) of the Act says “any transfer or partition of land in contravention of Sub-Section (1) shall be invalid”. Section 70 (mb) lays down a duty on Mamlatdar to decide U/s. 48B or 84 C whether a transfer or acquisition of land is invalid and to dispose off land as provided in Section 84 C. Section 83 A (1) lays down that no person shall acquire land by transfer which is invalid under any of the provisions of the Act. Section 83 A(2) lays down that a persons acquiring land by invalid transfer shall be liable to consequences as laid down in Section 84 or 84 C of the Act. Section 84 of the Act provides for summary eviction of unauthorised or wrongful occupant of the land. Section 84 C of the Act gives authority to the Mamlatdar to hold enquiry of any such illegal transfer and to decide it accordingly. Section 84 C (3) lays down that land declared to be invalidly transferred to vest in the State. Section 84 C (1) gives the power to the Collector to dispose the land which are declared to be invalidly transferred.

VII) Because in the Section 32 R, 43 (1), 43 (2), Section 70 (mb), Section 83 A (1), 83 A (2), Section 84, 84 C, 84 C(3) and 84 CC (1) of the Bombay Tenancy Act, at many places the words “any transfer” are used as these sections are having wider scope covering all types of transfers, and not only to the six kinds of transfers mentioned in Section 43 of the Act. Therefore the reasoning of these authorities below that the will and Hakka Sod Patrak are not covered by Section 43 of the Act do not stand good in law.

VIII) Because the language and effect of the will and registered Hakka Sod Patrak are to be taken into consideration in reference to Section 43 and other provisions mentioned above of Bombay Tenancy Act. The three Authorities have failed to consider the effect of two documents viz, will and Hakka Sod Patrak.

IX) Because the will and registered Hakka Sod Patrak have resulted into permanent transfer in perpetuity of this land purchased by the tenant U/s 32 of the Act, without sanction from the Collector U/s. 43 of the Act and therefore the application filed U/s 43 read with section 84 C of the Act was liable to be allowed completely.

X) Because the very intention of the legislature in putting restriction on a tenant – purchaser under the Bombay Tenancy Act to transfer the land is that the tenant who has purchased the land U/s 32 of should be owner and cultivator and the unconcerned third persons should not be benefited. Obviously this is because of the social reform to be achieved by implementing Bombay Tenancy Act effectively. This intention is defeated because of the judgments and orders of the three authorities below after remand.

XII) Because the definition of transfer as given in Section 5 Chapter II in Transfer of property Act is totally neglected by the learned Three authorities below.

XII) Because the registered Hakka Sod Patrak (relinquishment Deed) is practically nothing but a sale as defined in Section 54, Chapter III of the Transfer of property Act

because Digamber s/o Original tenant purchaser has accepted a consideration of Rs.25,000/- from the transferee Govinda Telele.

XIII) Because that the original document i.e. the Will and Hakka Sod Patrak are never produced by the respondent Nos. 1 to 4 in evidence. In the absence of these documents the findings of authorities below that the will and Hakka Sod Patrak do not come in the definition of transfer are not justified in law.

XIV) Because the families of Vishnu and Govinda were never joint families. Except the contention of respondents no.1 to 4 no evidence has come up on record. Therefore transfer of land to Govinda is hit by the provisions of Bombay Tenancy Act.

XV) Because respondent No.2 Harchand S/o Govinda Telele in his deposition recorded before Tahsildar and Agricultural Lands Tribunal Yawal, recorded after remand by Maharashtra Revenue Tribunal Mumbai in his examination in chief has said that the status of joint family has come to an end in the year 1959. Therefore the contention of the petitioner that the families of Vishnu and Govinda were never joint is supported by evidence of Harchand.

XVI) Because the learned authorities below have not taken into consideration all the circumstances of this case while deciding the matter.

XVII) Because the prayer of petitioner that the land in question should have been allotted to him as he has no other land to cultivate should have been granted U/s 32 P (2) (b) of the Bombay Tenancy Act.

XVIII) Because Digamber, son of original Tenang Vishnu Telele, did not file any restoration application to set aside the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982, nor he filed any Revision before Maharashtra Revenue Tribunal Mumbai against judgment and order of Sub-Divisional Officer, Bhusawal dated 16.5.1994. Therefore, the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982 have become final against him. The respondent Nos. 2 to 4 who are the heirs of transferred from Vishnu and Digamber, have also all rights, title and interest in the land.

XIX) Because the judgments and orders of three authorities below are contrary to law and good conscience.

XX) The petitioner craves, leave of this Honorable Court to add, amend, alter the grounds raised in this petition

6. **GROUND FOR INTERIM RELIEF:**

A. That the petitioner apprehends that the respondents may sell, alienate or part with the property illegally.

7. **MAIN PRAYER:**

Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Grant the special leave petition from the final judgment and order dated 14.12.2015 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ

Petition No.5427 of 2015 titled “Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors.”
And

b)Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

PRAYER FOR INTERIM RELIEF:

(a) It is prayed that interim directions be issued to the Respondent may be directed not to sell, alienate or part with the property. Gat No. 2752 comprising of Survey No. 638/1, 638/3-A, 639/1, 639/3 area measuring 2 Hectares 87 Ares situated at village Nhavi, Taluka Yawal.

(b)Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER REMAIN
GRATEFUL AS IN DUTY BOUND

Drawn and Filed by:

New Delhi

Date of drawn :

Advocate for the Petitioner

Date of filing:

[NOTE : To be supported by an affidavit]

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