In view of all that has been discussed above the petition is allowed only in this manner that resolution No. 271 passed by the Corporation on 19th July, 1965, accepting the recommendations of the Standing Committee, dated 7th July, 1965, placing the petitioner under suspension is hereby set aside. The petition is dismissed with regard to the other matters covered by the aforesaid resolution or resolutions. As regards the prayer of the petitioner for appropriate writs and directions in the matter of payment of his salary and allowances, I have no doubt that the concerned respondents will make payment to him of whatever is due to him in accordance with law keeping in view the order that has been made by this Court quashing the suspension of the petitioner. In view of the entire circumstances I make no order as to costs.

In view of what has been stated before, the petition under section 476 and 479A, Cr. Procedure Code (Cr. Misc. No. 199-D of 1966), is dismissed.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

KALI RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER—*Respondents*

Civil Writ No. 1035 of 1966.

September 23, 1966

Constitution of India (1950)—*Article* 226—*Petition under—Whether can be made by person having no interest in the subject-matter—Punjab Resumption of Jagirs Act* (*XXXIX of* 1957)—*S.* 2(3) *and* 4—*"Military Jagir"—By whom can be claimed—Application under section* 4—*Whether can be thrown out on ground of delay.*

Held, that whereas Article 226 of the Constitution has given unfettered jurisdiction to the High Courts to issue appropriate writs, orders or directions in appropriate cases, the person, at whose hands applications for such writs, orders or directions can be entertained, has not been left to the discretion of the Court. Relief under that Article can be claimed only for enforcing or safeguarding against the violations of fundamental rights or other legal rights and it is not permissible for a man in the street to move a High Court under Article 226 of the Constitution by saying that though admittedly he has no personal interest in

the matter and he has neither suffered by the impugned order nor would gain by its being quashed, he comes to Court *amicus curiae* and prays for the quashing of the order in question as it is without jurisdiction, and may result in some loss to the Government treasury. The only exception to the rule restricting the *locus standi* of a petitioner under Article 226 of the Constitution to a person who has a legal right and complains of its infringement, is the case of a writ in the nature of *habeas corpus* or a writ of *quo warranto*. This is not a self-imposed restriction coined out by High Courts, but is based on appropriate and correct interpretation of Article 226 of the Constitution itself.

Held, that a mere reading of the definition of "Military Jagir" in section 2(3) of The Punjab Resumption of Jagirs Act makes it clear that personal service of the specified kind includes such service rendered by anyone related to the applicant under section 4 by blood or marriage.

Held, that in the absence of a statutory bar of limitation, no statutory claim can be thrown out on the mere ground that it is somewhat delayed. There is no limitation of time provided by the Act for the making of an application under section 4 by the holder of a Military Jagir and such an application cannot be thrown out on the ground of delay.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur, on 20th September, 1966. to a Division Bench for decision of an important question of law involved in the case, and the case was finally decided by the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, on 23rd September, 1966.

Petition under Article 226 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2, *conferring the 'Jagir' as 'Military Jagir' on respondent No. 2, vide Memo No. 3960-IN (V)-66/4323, dated the 19th March of* 1966.

PREM CHAND JAIN AND ADARSH SEIN ANAND, ADVOCATES, for the Petitioner.

ADDITIONAL SOLICITOR-GENERAL, B. R. L. IYENGER, S. K. JAIN, ADVOCATE, FOR THE ADVOCATE-GENERAL, PRITAM SINGH JAIN, & NARESH CHAND JAIN, ADVOCATES, for the Respondents.

ORDER

NARULA, J.—This petition under Article 226 of the Constitution impugning the validity and legality of the Punjab Government's order, dated March 14, 1966, under section 4 of the Punjab Resumption of Jagirs Act 39 of 1957 (hereinafter referred to as the Act),

declaring the Jagirs of Tikka Rattan Amol Singh, respondent No. 2 (hereinafter called the Jagirdar) as not resumable under the proviso to section 3 of the Act, because of its being a Military Jagir within the meaning of sub-section (3) of section 2 of the Act has come up before us in Division Bench in pursuance of the order of reference passed by my learned brother Shamsher Bahadur, J., on September 20, 1966.

The facts relevant for deciding this case lie in a rather narrow compass. The Jagirdar resides in the town of Buria which is claimed to have been conquered by his ancestors in 1763. Certain Jagirs in the districts of Ambala and Karnal, dating back to the last century were admittedly inherited by him. By virtue of the operation of section 3 of the Act which came into force on the 14th of November, 1957, all Jagirs within the State of Punjab stood automatically extinguished and resumed in the name of the State Government. The Jagirdar as well as many other persons similarly situated filed separate writ petitions impugning the validity and constitutionality of the Act. Some of the writ petitioners in those cases had specifically claimed that they were holders of Military Jagirs. The writ petitions were dismissed by this Court on May 25, 1959, by a common judgment on that date given in *Amar Sarjit Singh* v. *State of Punjab*, C.W. No. 347 of 1958. Regarding the question of Jagirs being exempt from the provisions of the Act as Military Jagirs, it was observed by this Court that this was a matter which could not be gone into in the writ proceedings and had to be disposed of by the State Government under section 4 of the Act. Dissatisfied with the judgment of this Court, the Jagirdars took up the matter to the Supreme Court, but could not succeed even there,—*vide* judgment, dated February 20, 1962, in *Amarjit Singh* v. *The State of Punjab* (1). The validity and the constitutionality of the Act was finally upheld on that date by the Supreme Court.

In the meantime a proviso was added to section 3 of the Act by Punjab Act, 9 of 1961, with retrospective effect from the 14th of November, 1957, in the following terms:—

> "Provided that a military jagir granted at any time before the 4th day of August, 1914, shall enure for the life of the person, who is a Jagirdar immediately before such commencement and shall stand extinguished and resumed on his death."

(1) 1962 P.L.R. 842.

Thereafter, the Jagirdar submitted a detailed petition, dated December 16, 1965 (Annexure R. 2), along with various documents to the Revenue Minister, Punjab Government, claiming that his was Military Jagirdar within the meaning of section 2(3) and having been granted before the 4th of August, 1914, it could not be resumed during the life time of the Jagirdar on account of the retrospective operation of the newly added proviso to section 3 of the Act. Major Harinder Singh, Revenue Minister, by his impugned order, dated March 14, 1966 (Annexure R-1), went into the matter in detail and recorded the following findings of fact:—

"(i) that Jewan Singh, great-grandfather of the Jagirdar had rendered personal service to the British Government in 1857 by heading an Army Contingent charged with the maintenance of public order and that by his gallant act, Jewan Singh had defended Jagadhri against the mutineers;

(ii) that the original status of rulers of Buria including that of the ancestors of Rattan Amol Singh was reduced to mere Jagirdari somewhere between 1845 and 1857;

(iii) that the Jagir, which was granted to Rattan Amol Singh's family as a reward for the personal services rendered by his predecessors during the mutiny of 1857 was a Military Jagir; and

(iv) that even during the First World War, Lachhman Singh, the father of the petitioner had provided 199 recruits and given cash contribution towards the War Funds.

The only other fact, which may be mentioned in this judgment is that the Jagirdar had in the meantime submitted an application for payment of compensation for the resumption of the Jagirs in question and that though the compensation was sanctioned in respect of his Jagir in Karnal District on June 25, 1963, the Jagirdar had not drawn any instalment out of the sanctioned compensation and further that the proposal regarding the sanction of compensation for the Jagir in Ambala District was still under consideration at the time when the impugned order was passed under section 4 of the Act.

It was in the above circumstances that on May 20, 1966, this writ petition was filed by Kali Ram, who is a resident of Buria in Punjab and claims to be "interested in the welfare of the State, and also interested that the funds of the State are not squattered "(should

be 'squandered') away by the State Government illegally and without any reasons", as he is a citizen of the State. Admittedly the petitioner is not even a tax-payer though I do not want to suggest that he could have maintained this petition if he happened to be one. The petitioner has claimed a writ in the nature of *certiorari* to quash the order of the Punjab Government "conferring the 'Jagir' as 'Military Jagir' on respondent No. 2",—*vide* order, dated 19th March, 1966 (should be 14th of March, 1966), on the following grounds viz:—

(i) the Jagirdar having failed to save the Jagir right up to the Supreme Court in the previous proceedings; wherein he did not claim it to be a Military Jagir, could not now claim it to be so;

(ii) After once resuming the Jagir, the State Government had no jurisdiction to rebestow it by holding it to be a Military Jagir;

(iii) On the facts found by the Minister, the Jagirdar's case does not fall within the definition of "Military Jagir" as contained in the Act; and

(iv) The case of the Jagirdar does not fall within the proviso to section 3 of the Act.

No copy of the impugned order was filed with the writ petition as the authorities had declined to grant the requisite copy to the petitioner. The return of the State consists of the affidavit of Mr. R. D. Kapur, Deputy Secretary (Settlement), to the Government, Punjab, wherein it has been stated that the petitioner has no *locus standi* to file the writ petition, that the question of the various Jagirs being Military Jagirs or not, had been left open in the previous writ petitions, that the Jagirdar has not drawn any instalment out of the sanctioned Jagir compensation, and that the impugned orders of the Government declaring the Jagir in question as a Military Jagir under section 4 of the Act, are perfectly legal, valid and within jurisdiction.

The Jagirdar has filed a separate detailed written statement, dated September 14, 1966, in which he has taken a preliminary objection about the petitioner not having suffered any injury and the impugned order not having resulted in any injustice to the petitioner. and also objecting to the *locus standi* of the petitioner.. He has also contested the petitioner's claim on merits. The impugned order has been justified under proviso to section 3 of the Act. With his written statement, the Jagirdar has filed Annexure R-1, a copy

of the impugned order and Annexure R-2, a copy of the Jagirdar's petition, dated 16th of December, 1965, to the Revenue Minister under section 4 of the Act.

With the leave of the Court (granted in C.M. No. 3529 of 1966, on September 20, 1966), the petitioner filed a rejoinder, dated September 21, 1966, in reply to the written statement of the Jagirdar. Besides controverting some of the allegations contained in the Jagirdar's written statement and reiterating his own stand, the petitioner gave the following reply to the preliminary objection of the Jagirdar as to the legal interest of the petitioner in the subject-matter of the writ petition regarding the allegation that the petitioner had not suffered any injury or injustice on account of the impugned order:—

"In reply to preliminary objection No. 1, it is submitted that the deponent has a *locus standi* and he is very much aggrieved from the impugned order.

There are two villages Mal Majra and Bhogpur in district Ambala. The deponent has agricultural land in village Mali Majra. The Panchayat of those villages is one. The land revenue of villages Bhogpur and Buria Jagir in addition to about 40 other villages was being paid to respondent No. 2. After resumption of the Jagir, the Punjab Government was legally entitled to receive the land revenue. The Government would have spent this amount for the benefit of the deponent and other residents.. The Panchayat is also entitled to a share in the land revenue which is spent for the development of the villages.

Further if the amount of land revenue from the resumed Jagir is not paid to the respondent No. 2, it shall be utilized for the purpose of the State and to this extent, the liability of the deponent and other citizens of State in the form of different taxes including the sales tax shall be lessened, and the deponent will be benefited.

In this manner also, the deponent is an aggrieved person against the impugned order.

In reply to preliminary objection No. 2, a detailed reply has been given above. The Writ petition is legally maintainable. The deponent has suffered injury and injustice."

At the hearing of this petition before Shamsher Bahadur, J., on September 20, 1966, Mr. Niren De, the learned Additional Solicitor General raised a preliminary objection regarding the *locus standi* of Kali Ram, petitioner to invoke the extraordinary jurisdiction of this Court for setting aside the impugned order. In view of the considerable importance of the objection relating to the interpretation and scope of Article 226 of the Constitution, my learned brother made this reference, in pursuance of which, we have been called upon to settle this controversy. At the hearing of the case before us, the learned Solicitor General has again pressed the said preliminary objection. The pith and substance of his submission was that except in the case of a claim for writs in the nature of *habeas corpus* or *quo warranto*, no one can claim redress under Article 226 of the Constitution unless he can establish that he has a legal right to the relief claimed by him and is aggrieved by the violation of such right or at least apprehends the threatened violation of his rights.

Mr. Prem Chand Jain, the learned counsel for the petitioner, tried to meet the above-mentioned attack by a two-fold argument. Counsel submitted that the petitioner has *locus standi* to file and maintain this petition and to have the impugned order quashed. According to Mr. Prem Chand Jain, the only difference lies in the matter of there being or not being a discretion in the Court to grant or refuse to grant relief by the issue of a writ in the nature of *certiorari* between those cases where the petitioner is himself an aggrieved person on the one hand, and those cases in which the petitioner has no personal interest on the other. Learned counsel submitted that as distinguished from a claim for a writ in the nature of *mandamus* or *prohibition*, etc., any citizen can claim an order in the nature of *certiorari*, even if he has no personal right or interest in the subject-matter of the dispute. According to counsel, if the Court finds in such a case that the impugned order is either without jurisdiction or in excess of it or contains errors of law apparent on its face, the Court may, in exercise of its sound judicial discretion, quash or decline to quash the impugned order keeping in view the circumstances of each case, but the Court cannot even in such a case tell the petitioner to go out merely because the petitioner's complaint does not touch any infringement or threatened infringement of his legal rights. On the other hand, argued Mr. Jain, if the petitioner falls in the category of persons who can be said to have been aggrieved by the impugned order and the Court finds that the order is amenable to *certiorari*, the Court has no discretion in the matter and once it is found that the order in question is without jurisdiction or

in execess of jurisdiction or suffers from an apparent error of law, the writ of *certiorari* will issue *ex debito justitiae,* and the High Court will have no discretion in the matter.

In support of his first proposition, Mr. Jain relied on various English and Indian decisions. He first referred to the judgment of Cockburn, C.J., *In the matter of a suit of Robert Forster* against *Mary Owen Forster and Berridge* (2) (page 430) wherein the learned Judge while dealing with the *locus standi* of a co-respondent who had submitted an application in a matrimonial cause against the order for payment of costs of the suit for divorce, held as follows:—

> "I entirely concur in the proposition that, although the Court will listen to a person who is a stranger, and who interferes to point out that some other Court has exceeded its jurisdiction, whereby some wrong or grievance has been sustained, yet that is not *ex debito justitiae,* but a matter upon which the Court may properly exercise its discretion as distinguished from the case of a party aggrieved, who is entitled to relief *ex debito justitiae* if he suffers from the usurpation of jurisdiction by another Court."

The next case cited by Mr. Jain was the Division Bench judgment of the Bombay High Court (Chagla, C.J., and Gajendragadkar, J., as both of them were at that time), in *The Municipal Corporation for the City of Bombay and another* v. *Govind Laxman Savant* (3) in an appeal against the issue of a *mandamus* by a learned single Judge of that Court in an application under section 45 of the Specific Relief Act. Govind Laxam Savant was a rate-payer of the Municipal Corporation of the City of Bombay. The learned Judges held that a rate-payer was undoubtedly interested in the application of the municipal fund both as a rate-payer who has actually contributed to that fund and also as a beneficiary who is entitled to the various benefits which accrue to the citizens by the application of that fund. Relying on this observation counsel submitted that Kali Ram, though not a tax-payer, falls in the category of beneficiaries who are entitled to various benefits accruing to citizens in the State from a proper expenditure of the State Revenue which, according to the petitioner, is being legally squandered under the impugned orders. While observing that section 45 of the Specific Relief Act

(2) 122 English Reports 187.
(3) A.I.R. 1949 Bom. 229.

dealt with a procedure which in England corresponds to issuing of a high prerogative writ, the learned Judges held that the principles of English law dealing with the writ of *mandamus* must be imported in considering the provisions of section 45. It was in that context that the Bench repelled the contention raised before it on behalf of the Corporation to the effect that the plaintiff must show some right which he enjoys other than the rights enjoyed by the community at large before he can maintain a petition under section 45. Relying on various earlier decisions, the Division Bench of the Bombay High Court held that every rate-payer had an interest in the proper application of the municipal fund to which he contributed by paying rates and that it was unnecessary to consider the quantum of his interest, because the mere payment of rate was sufficient to qualify him to challenge an illegal or *ultra vires* act of a public authority. Construing section 45 of the Specific Relief Act, the learned Judges held that an applicant under that provision of law, has to be aggrieved either in respect of his property or in respect of his franchise or with regard to his personal right. The learned Judges quoted from the Irish case, *The Queen* v. *Drury* (4), wherein it had been held that though the general public are not aggrieved at all, it cannot be said with any show of reason, that a rate-payer who is aggrieved of his money being misapplied is not an aggrieved person, merely because he shares his grievance with certain other rate-payers, and that, therefore, he is not in the same position as mere member of the general public. In th Irish case it was held that it is the man, and everyone of the men whose interests were directly prejudiced that were aggrieved. The ratio of the judgment of the Bombay High Court is contained in the following passage:—

> "Therefore, on a review of these authorities it seems clear to us that a rate-payer who has contributed to the rates is injured in his property within the meaning of section 45 if the rates are misapplied or utilised contrary to the provisions of the law."

I do not think, the above-mentioned judgment of the Division Bench of the Bombay High Court is of any assistance to the petitioner. The scope of orders under section 45 of the Specific Relief Act, depended upon the express provisions of that section. Moreover, the case of *The Municipal Corporation for the City of Bombay and another* v. *Govind Laxman Savant*, (*supra*) was one of *mandamus* and it was unequivocally conceded by Mr. Prem Chand Jain, that

(4) (894) L.R. 2 Ir. 489.

no petition for a writ in the nature of *mandamus* could be maintained by a person who was not aggrieved by the impugned order, action or inaction. Learned counsel tried to equate his client with a rate-payer by submitting that a citizen of the State was as much a beneficiary from the State coffers as a rate-payer of Municipal Corporation. This argument appears to me to be misconceived. The basic case on which the Bombay Judges relied, was the Irish case, to which reference has been made above, and in which the learned Judges had clearly held the 'the general public are not aggrieved at all" implying thereby that a mere member of the public could not maintain a claim for a writ in the nature of *mandamus*. The case, as stated above, was not concerned with a writ in the nature of *certiorari*. Even if the petitioner had happened to be a tax-payer, I would not have extended the analogy of the Bombay case in his favour, as the case of a municipal tax-payer is entirely different from a tax-payer of the Government.

In *Commonwealth of Massachusetts* v. *Andrew W. Mellon* (5), the Supreme Court of the United States of America clearly brought out the distinction between the interest of a municipal rate-payer and a Government tax-payer in the following passage:—

> "But the relation of a tax-paper of the United States to the Federal Government is very different. His interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a Court of equity.
>
> The administration of any statute likely to produce additional taxation to be imposed upon a vast number of tax-payers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public, and not of individual concern. If one tax-payer may champion and litigate such a cause, then every other tax-payer may do the same, not only in respect to the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned,

(5) 67 L. Ed. U.S. 1078.

> The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the Government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for non-Federal purposes have been enacted and carried into effect."

I am in respectful agreement with the above observations. Not only is it correct that since 1950, when India became a Republic and the Constitution came into force, no one is shown to have made a claim of the type, the petitioner is seeking to press, but it is even otherwise correct that the constituent Assembly of India does not appear to have intended to open the floodgates of litigation for impugning any fiscal action of the Government involving expenditure from public revenues on the solitary ground that the petitioner is a beneficiary from the State revenues on account of being merely a citizen of this country. The position of a rate-payer or a member of a society or a Corporation aggrieved of the misapplication of funds to which he has directly contributed is of course different. Be that as it may, the petitioner does not even claim to be a tax-payer and cannot, therefore, derive any strength whatsoever from the judgment of the Bombay High Court in the above-mentioned case (reported in *The Municipal Corporation for he city of Bombay and another* v. *Govind Laxman Savant* (3).

The next case in chronological order to which reference was invited on behalf of the petitioner, is the judgment of Division Bench of Assam High Court in *Damodar Goswami* v. *Narnarayan Goswami and others* (6). Damodar, petitioner under Article 226 of the Constitution was an elector of the Assam Legislative Assembly, who had not filed any election petition against the successful election of Narnarayan Goswami, respondent from his constituency. An unsuccessful candidate had filed an election petition and Damodar went to the Assam High Court for the issue of a writ in the nature of *certiorari* to quash the order of the Election Tribunal. An objection was taken on behalf of the respondent in that case to the *locus standi* of Damodar to maintain the writ petition on the ground that he had no legal right in the matter and that he was not even a party to the

(6) A.I.R. 1955 Assam 163.

proceedings before the Election Tribunal. Reliance appears to have been placed in support of the objection on certain decisions of the Supreme Court and of the various High Courts in India. Sarjoo Prosad, C.J., who wrote the judgment of the Division Bench of the Assam High Court, specifically observed in this connection as follows:—

> "The learned counsel relies upon the decision of the Supreme Court as also various other decisions of the High Courts in India to show that the emergency powers under Article 226 should be exercised only where it is necessary for the protection of a legal right and should not be invoked by any person, who is unable to satisfy the Court that any such right of his has been violated or infringed."

The Assam High Court observed that the above quoted proposition was undoubtedly correct to a certain extent as was indicated by the language of Article 226 itself. After referring to the judgments of the Supreme Court in *Charanjit Lal Chowdhury* v. *The Union of India and others* (7), and in *The State of Orissa* v. *Madan Gopal Rungta* (8), the learned Judge observed that it was important to remember "that all the above cases are cases of *mandamus*." They then referred to the judgment of the Madras High Court in *re P. Ramamoorthi* (9), where the same principles had been applied even in a case for a writ in the nature of *certiorari*, and it had been held that the powers of a High Court under Article 226 could be invoked only at the instance of a person who had personal grievance against any act of the State, which inflicted legal injury on the petitioner. Sarjoo Prosad, C.J., observed in connection with the Madras case that though the applicant therein had prayed for the issue of a writ of *certiorari*, actually the prayer was to call for the records and to quash the orders of the Government of Madras making certain nominations to the Madras Legislative Assembly. The writ claimed in the Madras case, even if available could not, in the opinion of the Assam High Court, in any sense be described as a writ of *certiorari*, would more appropriately have been placed in the category of writs of *mandamus* or any other appropriate direction. After referring to the clear and fundamental distinction between a writ of *mandamus* and a writ of *certiorari*, and referring to the discretion of the Court to

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(7) 1950 S.C.R. 869=A.S.R. 1951 S.C. 41.
(8) A.I.R. 1952 S.C. 12=1952 S.C.R. 28.
(9) A.I.R. 1953 Mad. 94.

issue them, the Assam High Court observed in *Damodar's case* as below:—

> "As a general rule, *certiorari*, will not issue at the instance of one not named as a party to the proceedings in which the judgment or order sought to be reviewed is entered. But it is not always necessary that the applicant should be in such cases a party to the record. It is enough if he be interested in the subject-matter upon which the record acts. The matter rests in the sound discretion of the Court."

After referring to certain passages from Ferris on Extraordinary Legal Remedies, the learned Judges of the Assam High Court held as follows:—

> "It also follows from the above discussion that a writ of *certiorari* will be granted *'ex debito justitiae'* to quash proceedings which the court has power to quash where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction. This may be done on the application of an aggrieved party or even at the instance of a member of the public provided the conduct of the party aggrieved does not disentitle him to the relief. The writ is not restricted to those cases where the application is made by the party directly affected or aggrieved."

Mr. Prem Chand Jain, contended that no doubt has been left by Sarjoo Prosad, C.J., in the above case about the right of a mere member of the public maintaining an application for a writ in the nature of *certiorari* provided such a member of the public has not disentitled himself to claim that relief on account of his own conduct. The Judges of the Assam High Court went to the extent of describing a petitioner claiming a writ of *certiorari* as a mere member of the public as being "more or less in the position of an *amicus curiae*" to show to the Court that a particular judgment for determination is manifestly illegal or *ultra vires*. In such circumstances, held the Assam High Court, it would be the duty of the High Court to remove such a judgment or determination. They laid down law in this respect in the following words:—

> "It implies in other words that where an order of the subordinate Court or Tribunal is without jurisdiction or apparently erroneous, the attention of the Court may be

drawn to the matter by any individual interested therein praying for a writ of *certiorari* and the Court if satisfied may grant the writ in question and remove or demolish the erroneous record."

The last passage in the judgment of the Assam High Court on which Mr. Jain, relied, is worded thus:—

"A right of a member of the public to apply for a writ of *certiorari* would in appropriate cases fall within the ambit of a legal right or the enforcement of a legal duty as contemplated by Article 226 of the Constitution."

In *Damodar's case,* however, the learned Judges of the Assam High Court after dealing with the academic question of the scope of the writ in the nature of *certiorari* in the matter of the person, who could claim it, held on the facts of that case that Damodar petitioner was himself entitled to leave of the High Court in the exercise of his own right as an elector in the constituency to which the election related. In this connection, the Assam High Court held as below:—

"He rightly claims that in a democratic set-up, it is his valued and cherished right, not only to exercise his vote but also to see that his constituency is properly represented in the legislatures of the country and for that purpose to insist that the elections are conducted fairly and in accordance with the rules framed for that purpose so as to register the true will of the people.

A violation of the mandatory rules of election affects him just as much as any other individual voter in the constituency and in that respect he is almost in the same position as the candidate himself. Section 81, Representation of Pepole Act, concedes to him an equal right with the candidates to call in question an illegal and invalid election".

It appears that the ultimate decision of the Assam High Court on the question of *locus standi* of the petitioner before it in *Damodar's case* went on the finding of fact about a valuable legal right residing in the petitioner and not upon Damodar having been a mere member of the public entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution. As stated above, the learned Judges specifically referred to the judgment of the Supreme Court in *Charanjit Lal's case* and *Madan Gopal's case,* but restricted the operation of those judgments to petitions for writs in the nature of

mandamus, as those two cases happened to deal with such writs. With the greatest respect to the learned Judges of the Assam High Court, I have not been able to appreciate this distinction in the face of the clear language in which their Lordships of the Supreme Court have laid down the law in this respect in the two cases under Article 226 of the Constitution irrespective of the claim therein being for a writ in the nature of *certiorari* or *mandamus*.

Reference was then made to two judgments of the Andhra Pradesh High Court. The first is Division Bench judgment in *S. Srikishan* v. *The State of Andhra Pradesh* (10). After referring to the observations of the Madras High Court in *re P. Ramamoorthi* (9), Subba Rao, C.J. (as the Hon'ble Chief Justice of India then was) and Jaganmohan Reddy, J., held as follows:—

> "The High Court can, under that Article, issue directions or writs described therein for the enforcement of any rights conferred by Part III or for any other purpose. It is true that, in the exercise of its discretion, it will not issue such directions unless the petitioner received a legal injury.
>
> As a rule of guidance applicable to ordinary cases, we accept, with great respect, the aforesaid observations of the learned Judges. But, in extraordinary cases, where, for instance, an Act is passed by the Parliament or by a Legislature in excess of its constitutional power reshaping the map of India, we find it difficult to say that a citizen of India who lived his lifetime as a permanent resident of one of the States abolished, has no personal interest to maintain an application. But, as we have held against the petitioner on the merits, we do not propose to express our final opinion on this question."

The above-quoted observations of the Division Bench of the Andhra Pradesh High Court show that the writ petition having been dismissed on merits, the Bench expressly refrained from expressing any final opinion on the question of *locus standi* of a petitioner under Article 226 of the Constitution, but still insisted that at least in the exercise of its discretion, the High Court will not issue direction under that Article "unless the petitioner received a legal injury". The judgment

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(10) A.I.R. 1957 Andh. Prad. 734.

was also based on the view expressed by the Bench to the effect that a citizen of India who had lived his lifetime as a permanent resident of one of the States which was being abolished by the States' Reorganisation Act, did appear to have a personal interest to maintain an application questioning the abolition of that State. The second judgment of the Andhra Pradesh High Court to which reference was made by Mr. Jain, was in the case of *Venugopalan and others* v. *Commissioner, Vijayawada Municipality and another* (11). The said judgment is not directly relevant as it was pronounced in a petition by three rate-payers of the Vijayawada Municipality who were also electors of that Municipal Committee praying for the issue of a writ of *mandamus* directing the municipal authorities not to hold municipal elections for certain wards. It was not a case of *certiorari* and it was found as a fact in that case that it could not be said that the applicants therein had no specific legal right to be enforced or that their right would not be affected or infringed by the impugned Act of the respondents in holding the disputed elections. It was held that they could rightly claim that in a democratic set-up it was their valuable right not only to exercise their vote, but also to see that their wards were properly represented in the municipal council. The petitioner cannot, therefore, make any capital out of the judgment of the Andhra Pradesh High Court in the *Venugopalan's case* (supra). The last judgment of the Andhra Pradesh High Court to which reference was made by learned counsel, was of a Division Bench of that Court (K. Subba Rao, C.J., and Srinivasachari, J.) in *T. Venkante Swara Rao* v. *State of Andhra Pradesh and others* (12). This was also a rate-payer's petition in connection with the elections to the Vijayawada Municipality. The learned Judges held that a rate-payer is vitally interested in seeing that the elections are properly held in accordance with the provisions of the relevant statute and the rules framed thereunder. On that basis they held that a writ petition at the instance of a rate-payer in connection with the municipal elections was maintainable. There is no quarrel with that proposition. I have already pointed out above that the petitioner is not even a tax-payer and that even if he were so, he would not be entitled to maintain a petition of this type merely on that ground.

Reference was also made by counsel to the judgment of the Calcutta High Court (S. R. Das, J.) in *S. K. Sawday* v. *N. Singha Roy*

(11) A.I.R. 1957 Andh. Prad 833.
(12) A.I.R. 1958 And. Prad. 458.

and another (13). This was a pre-constitution case under section 45 of the Specific Relief Act. Observations made by the learned Judge in the course of that judgment cannot, therefore, be directly relevant in deciding the question that faces us relating to the scope of proceedings under Article 226 of the Constitution. Moreover, the Calcutta case arose out of the preparation of the electoral rolls for the then ensuing municipal elections under the Calcutta Municipal Act. In that context it was held by S. R. Das, J., that the learned Judge found himself in agreement with the proposition that *certiorari* did not require any personal right or interest to support a claim for that writ. The learned Judge drew distinction between the case of a man who might be personally aggrieved and could, therefore, ask for a writ *ex-debito justitiae* and the other case of a man who had not suffered any injury in whose case the Court had a discretion to grant or refuse the application according to the circumstances of the case. The above-said dictum of the judgment of the Calcutta High Court was based on the English practice and reliance had been placed in that connection on Mellor's Practice of the Crown Office and on some of the English cases to which reference has already been made above.

Whereas Article 226 of the Constitution has given unfettered jurisdiction to the High Courts to issue appropriate writs, orders or directions in appropriate cases, the person at whose hands applications for such writs, orders or directions can be entertained, does not appear to have been left to the discretion of the Court. Relief under that Article can be claimed only for enforcing or safeguarding against the violation of fundamental rights or other legal rights and it does not appear to be permissible for a man in the street to move a High Court under Article 226 of the Constitution by saying that though admittedly he has no personal interest in the matter and he has neither suffered by the impugned order nor would gain by its being quashed, he comes to Court *amicus curiae* and prays for the quashing of the order in question as it is without jurisdiction, and may result in some loss to the Government treasury. The only exception to the rule restricting the *locus standi* of a petitioner under Article 226 of the Constitution to a persons who has a legal right and complains of its infringement, is the case of a writ in the nature of *habeas corpus* or a writ of *quo warranto*. This is not a self-imposed restriction coined out by High Courts, but is based on appropriate and correct interpretation of Article 226 of the Constitution itself.

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(13) A.I.R. 1946 Cal. 206.

Mr. Jain then referred to the judgment of a learned Single Judge of the Madras High Court in *Issardas Sommamal Lulla* v. *The Collector of Madras and Additional Custodian of Evacuee Property, Madras* (14). In that case reliance was placed by Ramachandra Iyer, J., on the following passage from Volume 11 of Halsbury's Laws of England (third edition), pages 140 and 141:—

> "Although the order is not of course, it will, though discretionary, nevertheless be granted *ex-debito justitiae*, to quash proceedings which the Court has power to quash, where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction, if the application is made by an aggrieved party and not merely by one of the public and if the conduct of the party applying has not been such as to disentitle him to relief; and this is the case, even though *certiorari* is taken away by statute, and although there is an alternative remedy."

The learned Judge also relied on the judgment of the Queen's Bench Division in *Queen* v. *Justices of Surry* (15) and in *R.* v. *Richmond Confirming Authority; Ex. parte HOWitt* (16) and on the observations of Cockburn, C.J., in *Forster* v. *Forster* (17) (case already referred to by me from the English Reports), and on the basis of those cases held as follows:—

> "It is, therefore, clear that, where an inferior tribunal has exceeded its jurisdiction; apart from the question of the subsistence of any right, a party to the proceeding before the inferior tribunal will be entitled to apply for the issue of a writ of *certiorari*. He would be a person aggrieved by reason of the fact that he contested the application before the Tribunal and that contest was over-ruled. In such a case there is no question of discretion of the Court except where he by his own conduct had disabled himself from applying for a writ.

I am, therefore, of opinion that even though it has not been decided in this case that the petitioner acquired

(14) A.I.R. 1959 Mad. 528.
(15) (1870) 5 Q.B. 466.
(16) 1921—1 K.B. 248.
(17) (1863) 4 B. and S. 187.

any right to the quota rights that had been claimed by him he having been a party to a proceeding before the respondent would be entitled to apply under Article 226 of the Constitution as a person aggrieved by that order. In such a case the writ should be issued to quash an order passed without jurisdiction, *ex-debito justitiae*. No question of discretion can arise in the matter, as it is not contended that the petitioner has precluded himself from applying to this Court by reason of any conduct on his part."

From the above-quoted passage in the judgment of the Madras High Court, it is clear that the petitioner in that case was a party to the proceedings in which the impugned order had been passed which was sought to be set aside. He was, therefore, not a mere member of the public and the larger question now canvassed before us in the instant case about a mere member of the public being entitled to bring such a case before the Court, as almost an *amicus curiae* did not arise in *Issardas's* case (*supra*). Though the judgment in that case was given in March, 1959, and detailed reference was made to the English cases, none of the leading judgments of the Supreme Court of India on the subject appear to have been brought to the notice of the learned Judge. With respect to the learned Judge of the Madras High Court, I am constrained to hold for the reasons hereinafter detailed that the general observations in the case of *Issardas Sommamal* (*supra*) are not reconcilable with the law laid down by the Supreme Court and cannot, therefore, be held to have any persuasive value for deciding the question that confronts us.

The last case to which Mr. Jain referred in this connection was the single Bench judgment of the Calcutta High Court in *Narendra Nath Chakravarty* v. *Corporation of Calcutta and others* (18). D. N. Sinha, J., granted the writ petition of a rate-payer and the registered voter of the Corporation of Calcutta in that case to restrain the Corporation of Calcutta by a writ in the nature of *mandamus* from discussing or passing certain resolutions about certain happenings in Kerala as the said resolutions were held to have no bearing whatever upon Municipal affairs, but were mere dissertations in pure politics. For the reasons already given by me in connection with the situation relating to petitions of rate-payers for controlling the action of Municipal Corporation concerned, I hold that the judgment of the Calcutta High Court in this case is of no avail to the petitioner.

(18) A.I.R. 1960 Cal. 102.

On the other hand the Additional Solicitor General invited our attention to the various Supreme Court judgments on the subject. The first case, *T. C. Basappa* v. *T. Nagappa and another* (19) does not appear to deal with the precise question which we are called upon to decide. It merely dealt with the scope of the jurisdiction of a High Court under Article 226 of the Constitution. It was held that in view of the express provisions in our Constitution, the Court need not now look back to the early history or the procedural technicalities of writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. High Courts, it was held, can issue writs in the nature of *certiorari* in all appropriate cases and in an appropriate manner so long as it keeps to the broad and fundamental principles which regulate the exercise of jurisdiction in the matter of granting such writs in English law. On the precise question to be answered by us, Mr. Niren De. referred to the judgments of the Supreme Court in *Charanjit Lal Chowdhury* v. *The Union of India and others* (7), *the State of Orissa* v. *Madan Gopal Rungta* (8), *Calcutta Gas Company (Proprietary) Ltd.* v. *State of West Bengal and others* (20), *and Gadde Venkateswara Rao* v. *Government of Andhra Pradesh and others* (21).

In *Chiranjit Lal Chowdhuri's* case it was held (per Saiyid Fazal Ali, Mukherjea and Dass, JJ.), that except in the matter of writs in the nature of *habeas corpus* no one, but those whose rights are directly affected by a law, can raise the question of constitutionality of that law and claim relief under Article 32. The distinction between the scope of Article 32 on the one hand and Article 226 of the Constitution on the other may be borne in mind. Whereas Article 32 can be invoked for safeguarding fundamental rights only, resort can be had to Article 226 for safeguarding other legal rights also. So far as the *locus standi* of a person to move the Court is concerned, there does not appear to me to be any difference between Article 32 and Article 226 of the Constitution. The only other difference between the two Articles is that whereas in a case under Article 32 which Article itself has been placed in Part III of the Constitution (Fundamental Rights), the Court has no discretion and the petitioner has a right to obtain relief from the Supreme Court for the enforcement of fundamental rights, this is not so in a writ petition filed before a High Court under Article 226. The High Court may in the exercise of its sound judicial discretion

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(19) A.I.R. 1954 S.C. 440.
(20) A.I.R. 1962 S.C. 1044=(1962) Supp. 3 S.C.R. 1.
(21) A.I.R. 1966 S.C. 828.

decline to grant relief in appropriate cases even in respect of the established violation of a legal right.

In *Madan Gopal Rungta's* case, it was held after quoting Article 226 of the Constitution as below:—

> "The language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article."

The above-quoted dictum of their Lordships of the Supreme Court in the *State of Orissa* v. *Madan Gopal Rungta* (*supra*), does not appear to me to leave any doubt about the fact that the existence of a right in the petitioner is the very foundation of the exercise of jurisdiction under Article 226 of the Constitution. Kania, C.J., who wrote the judgment of the Court, did not draw any distinction between a writ of *certiorari* and a writ in the nature of *mandamus* while laying down the above law. The distinction between the said two writs in this respect in the English practice has, therefore, been ruled to be non-existent under Article 226.

In the case of *Calcutta Gas Company (Proprietary) Ltd.* (*Supra*), Subba Rao, J. (as the learned Chief Justice of India, then was), held in this connection as follows:—

> "The first question that falls to be considered is whether the appellant has *locus standi* to file the petition under Article 226 of the Constitution. The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply

thereunder; but it is implicit in the exercise of the extra-ordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *State of Orissa v. Madan Gopal* (8), this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Charanjit Lal Chowdhuri* v. *Union of India* (7), it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply, in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like *habeas corpus* or *quo warranto* this rule may have to be relaxed or modified."

The above seems to be the last word on the subject and appears to provide for all eventualities. The above-quoted dictum of the Supreme Court clearly implies that except in the cases of writs like *habeas corpus* or *quo warranto,* the only right that can be enforced under Article 226 of the Constitution is the personal or individual right of the petitioner himself.

While describing the jurisdiction of the High Court under Article 226 of the Constitution as wide enough to enable the High Court to reach injustice wherever it is found, Subba Rao, J., in *Dwarka Nath* v. *Income-tax Officer, Special Circle, D. Ward, Kanpur* (22), *held that* to equate the scope of the power of Indian High Courts under Article 226 with that of the English Courts to issue prerogative writs was to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. The learned Judge, however, added that this did not imply that the High Courts could function arbitrarily under Article 226 and that there were some limitations implicit in the Article itself besides others which might be evolved to direct the Article through defined channels.

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(22) A.I.R. 1966 S.C. 81.

The last on the subject is the judgment in *Gadde Venkateswara Rao* v. *Government of Andhra Pradesh and others*(21), wherein it was held as follows:—

"The first question is whether the appellant had *locus standi* to file a petition in the High Court under Article 226 of the *Constitution*. This Court in *"Calcutta Gas Co., (Proprietary) Ltd.* v. *State of West Bengal* (1962) Supp. 3 S.C.R. at p. 6 (A.I.R. 1962 S.C. 1044 at p, 1047), dealing with question of *locus standi* of the appellant in that case to file a petition under Article 226 of the Constitution in the High Court, observed; "Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right..... The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like *habeas corpus* or *quo warranto* this rule may have to be relaxed or modified." Has the appellant a right to file the petition out of which the present appeal has arisen ? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000 and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the Committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees

> of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra that 'Ordinary' the petitioner, who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable.

Regarding the applification of the expression "personal right" the law laid down in the case of *Gadde Venkateswara Rao* (*supra*) is the same as had already been settled in *Calcutta Gas Company case* (*supra*).

The survey of the above-mentioned cases on the subject clearly shows that with the exception of *habeas corpus* and *quo warranto*, no writ, order or direction under Article 226 of the Constitution can be claimed by a person, who has no legal or personal right in the subject-matter of dispute and who is not personally aggrieved in that sense by the impugned order, act or default. Even the Andhra Pradesh High Court in its latest judgment in *The Executive Officer, T. T. Devasthanams Tirupathi* v. *K. Ramachandra Naidu and others* (23) held that only a person, who has suffered an infliction of his personal legal right by the impugned order, can seek to remove it on *certiorari*. There is, therefore, no force in the first contention of the counsel for the petitioner.

The second contention of the petitioner about his claim to have some interest in the State Government's treasury as a beneficiary, is equally misconceived. I have already observed that such a supposed interest is too remote to be equated to the interest of a rate-payer in the administration and conduct of the affairs of a Municipal Committee.

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(23) A.I.R. 1966 And. Prad. 112.

On the facts of this case, I hold that the petitioner has no personal or individual right in the Military Jagir, which is the subject-matter of the impugned order and the petitioner cannot be said to have been legally aggrieved by the restoration of the Jagir to the Jagirdar. The preliminary objection raised by the Solicitor-General must, therefore, be upheld. This writ petition merits dismissal on that short ground.

There is still another cogent ground for declining to consider this writ petition. In paragraph 1 of his written statement, the Jagirdar has averred *inter alia* as below:—

> "It is denied that the petition has been filed to serve the interest of the State or for the welfare of the State or its funds. The petition is the result of personal and private enmity of the petitioner towards the replying respondent. The petitioner in his reply, dated May 5, 1966, to show cause notice issued and served on the petitioner in the middle of April, 1966, by the State Government under sections 16 and 20 of the Punjab Municipal Act, *inter alia* remarked:—
>
> 'Rattan Amol Singh is inimical to me and he has got this notice served upon me. I have opposed him on other occasions also, whenever he worked against public interest.'
>
> These remarks are self-explanatory and establish that the petition is in fact of vendetta on account of personal enmity."

In the corresponding paragraph of petitioner's rejoinder, dated September 21, 1966, it has been contended in reply as follows:—

> "The petition is not the result of personal and private enmity. The para reproduced from the show-cause notice is correct. The writ petition was filed immediately when the impugned order came to the knowledge of the petitioner. The show-cause notice has nothing to do with the filing of the present writ petition."

The petitioner has clearly admitted in his above-quoted communication, dated May 5, 1966, that the Jagirdar is inimical to him and that the petitioner has been opposing the Jagirdar on other occasions also. From the admitted facts of the case it appears to me to be established that this effort of the petitioner to deprive the Jagirdar of the fruits of the impugned order is not the out come of any patriotic instinct but has been motivated by personal vendetta. The machinery provided by

Article 226 of the Constitution is not intended to be operated for giving vent to personal vendetta or for wreaking private vengeance. The filing of this petition is an abuse of the process of Court. On that additional ground we could have refused to hear the petitioner in this case.

In view, however, of the fact that both sides have argued the matter on merits subject to our decision on the preliminary objection, I propose to deal briefly with the three points raised by Mr. Prem Chand Jain, in that connection.

The learned counsel has fairly and frankly conceded that it is not open to him in these proceedings to question any of the findings of fact recorded by the Revenue Minister under section 4 of the Act. He has also expressly stated that he does not question the jurisdiction of the Revenue Minister to give an appropriate decision under section 4 of the Act on behalf of the State Government. He, however, emphasised that the impugned order (Annexure R-1) is without jurisdiction, because the Jagir in question is not a Military Jagir inasmuch as the Jagirdar had not rendered any personal service and that the finding of the Jagir having been conferred at or about the time of mutiny in 1857 A.D. is inconsistent with the finding about the services rendered by the ancestors of the Jagirdar in the Sikh Wars in or about 1849. The only other contention pressed by the counsel is that the State Government could give a decision under section 4 of the Act on an application filed by a Jagirdar immediately when the Act came into force in 1957, and not so long after that. All other points contained in the writ petition were not pressed by the counsel. In view of the findings of fact recorded by the Punjab Government, to which reference has already been made in an earlier part of this judgment, the case of the Jagirdar appears to fall clearly within the definition of "Military Jagir" as contained in section 2(3) of the Act. The said sub-section reads as follows:—

> "'Military Jagir' means a jagir granted, affirmed or continued in favour of any person as a reward for his personal service as a member of the Armed Forces or the Forces charges with the maintenance of public order or for similar services of any one related to him by blood or marriage".

From a mere reading of the definition of the Military Jagir, it is clear that personal service of the specified kind, includes such service rendered by anyone related to the applicant under section 4 by blood

or marriage. Lachhman Singh and Jewan Singh were father and great-grand-father of the Jagirdar, respectively. Both of them were, therefore, related to the Jagirdar by blood. Service of the specified type rendered by them would, therefore, be enough to bring the case within the mischief of Military Jagir. Nor is there any force in the other contention of the learned counsel to the effect that the service found by the Minister to have been rendered by Lachhman Singh and Jewan Singh, was neither as members of Armed Forces nor as members of forces charged with the maintenance of public order, and that, therefore, the findings of the Minister do not justify the legal inference of the Jagir in question falling within sub-section (3) of section 2 of the Act. It may first be emphasised that three kinds of service are relevant to constitute a Military Jagir, namely:—

(a) as member of the Armed Forces; or
(b) as a member of the forces engaged in the maintenance of public order; or
(c) other similar services.

There appears to be no doubt that the services which the ancestors of the Jagirdar are found to have rendered, were in any case similar to those mentioned in clauses (a) and (b) above. Besides this, one of the findings of the Minister is that Jewan Singh, great-grand-father of the Jagirdar rendered personal service to the British Government by heading an Army Contingent "charged with the maintenance of public order." This clearly falls within category (b) of the services referred to above. There is, therefore, no error of law apparent on the face of the impugned order on the basis of which it could be held that the finding of the Minister to the effect that the Jagir in question was a Military Jagir, is liable to be set aside. The second attack on the merits of the order borders on the question relating to the appreciation of evidence. I do not find any force in that objection on merits. I have already given in an earlier part of this judgment a resume of the findings of the Minister. To say the least, they do not appear to be contradictory to any extent whatsoever.

The only question that remains to be decided is about the petitioner's objection to the jurisdiction of the Punjab Government in entertaining a claim under section 4 of the Act after a period of about 8 years, subsequent to the passing of the Act. No such point has been specifically taken in the writ petition. The counsel has assumed that the petitioner approached the State Government for the purpose in question for the first time in December, 1965, when he submitted

his application annexure R-1. According to the petitioner the application under section 4 of the Act, could not be made after the Jagir was once resumed. There is a clear fallacy in this argument. All Jagirs in Punjab stood automatically extinguished and resumed with effect from the date of the passing of the Act by virtue of operation of section 3 thereof; which provision is in the following terms:—

> "3. Notwithstanding anything to the contrary contained in any law or usage, any grant, settlement, sanad or other instrument, or any decree or order of any Court or authority, all Jagirs shall, on and from the commencement of this Act, be extinguished and stand resumed in the name of the State Government :
>
> (Provided that a military Jagir granted at any time before the 4th day of August, 1914, shall ensure for the life of the person who is a Jagirdar immediately before such commencement and shall stand extinguished and resumed on his death.)"

Necessarily, therefore, an application under section 4 of the Act, could only be made after the automatic extinguishment and resumption of the Jagirs under section 3. Nor is there any force in the complaint about delay in the making of the application in question. The petitioner's contention about the maintainability of the application under section 4 of the Act conditional on its having been filed immediately on the coming into force of the Act in 1957, is also misconceived. The claim of the petitioner is based on the proviso to section 3 of the Act which was added on 28th of March, 1961, by section 3 of the Punjab Resumption of Jagirs Amendment Act 9 of 1961. Though retrospective effect was given to the amendment and the same was deemed to have come into force at the time of the enactment of the principal Act on the 14th of November, 1957, nobody could possibly have applied for relief based on that proviso prior to 1961. It is also significant that at that time proceedings were pending at the hands of the Jagirdar himself as well as some other such persons in the Supreme Court aiming at the striking out of the entire Act on the allegation of its being unconstitutional. That even after the disposal of the case by the Supreme Court and after the addition of the proviso to section 3, the Jagirdar took long in approaching the State Government, has been justified on his behalf by the learned Additional Solicitor-General on the ground that he had to collect a good deal of cogent evidence to support his claim before the State Government. In any case, so far as the matter of delay is concerned,

in the absence of statutory prohibition or bar of limitation, it is not possible for this Court to strike down an order of the State Government on the only ground that the party concerned was guilty of laches in approaching the State Government. The only other aspect of the matter is the claim of the petitioner to the effect that the Jagirdar's application under section 4 read with the proviso to section 3 of the Act, was barred by time. Admittedly, there is no provision in the Act fixing any limitation for the purpose. Counsel referred to sections 5 and 6 of the Act and argued that in any case an application under section 4 had to be made, if at all, prior to a claim for compensation for resumption of the Jagirs being allowed. There is no warrant for that proposition in any of the said two provisions. On the contrary section 6(1) of the Act provides that Jagirdar who is entitled under the Act to payment of compensation for the extinguishment and resumption of his Jagirs, can make an application in the prescribed manner to the Collector of the district concerned at any time before the 15th of May, 1961. According to the counsel for the petitioner this is the time limit by which all claims under section 4 should have been settled. There seems to be no reason to imply any such limitation in section 6. Proviso (a) to sub-section (1) of section 5 authorises the holder of a Military Jagir covered by the proviso to section 3 of the Act to forgo such Jagir and to claim instead compensation for the same. Such a provision was intended to be utilised by an old or ailing Jagirdar who may not expect to live long enough to take advantage of the exception contained in the proviso to section 3 under which a Military Jagir ensures only for the lifetime of the Jagirdar, who was alive at the time of the coming into force of the Act. Such a choice is allowed to be exercised by a Jagirdar under proviso (a) to sub-section (1) of section 5 before the 15th of May, 1961. It is for that reason that the same date appears to have been referred to in sub-section (1) of section 6 of the Act. It is a settled law that in the absence of a statutory bar of limitation, no statutory claim can be thrown out on the mere ground that it is somewhat delayed. On a proper interpretation of the relevant provisions of the Act, it is held that there is no limitation of time provided by the Act for the making of an application under section 4 by the holder of a Military Jagir.

No other point was argued before us in this case. This writ petition, therefore, fails and is dismissed with costs..

SHAMSHER BAHADUR, J.—I agree.

K. S. K.