

\*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+W.P.No.2008 of 2016

% 04-03-2016

#M.P. Tej Babu  
Petitioner

..

Vs.

\$The State of Telangana,  
Represented by its Principal Secretary,  
Department of Women, Children, Disabled  
And Senior Citizens (DW), Secretariat,  
Hyderabad and 2 others  
Respondents

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>HEAD NOTE:

! Counsel for petitioner : Mr. Unnam Muralidhar Rao

^ Counsel for respondent No.1: --

Counsel for respondent No.2: --

Counsel for respondent No.3: Party-in-person

? CASES REFERRED:

1. Laws (P&H)-2013-9-528 – L.P.A.No.1007 of 2013, dt.26-09-2013,

High Court of Punjab & Haryana

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.2008 of 2016

Date : 04-03-2016

Between:

M.P. Tej Babu  
Petitioner

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And

The State of Telangana,  
Represented by its Principal Secretary,  
Department of Women, Children, Disabled  
And Senior Citizens (DW), Secretariat,  
Hyderabad and 2 others  
Respondents

..

Counsel for petitioner : Mr. Unnam Muralidhar Rao

Counsel for respondent No.1: --

Counsel for respondent No.2: --

Counsel for respondent No.3: Party-in-person

The Court made the following:

**JUDGMENT:**

This Writ Petition is filed for a writ of certiorari to declare order dated 13-01-2016 in File No.B/3860/2015 of respondent No.2 whereby he has allowed the claim of respondent No.3 in respect of plot No.1205, Jubilee Hills Co-operative Society, Road No.60, Jubilee Hills, Hyderabad, under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Act") against the petitioner, as illegal and arbitrary.

Respondent No.3 filed a claim before respondent No.2 under the Act with the following averments:

Respondent No.3 was the wife of one late M.P. Damodar and they have four children i.e., one son – the petitioner, and three daughters. The husband of respondent

No.3 left behind sufficient property to meet her necessities during her old age. When respondent No.3 was staying with the petitioner, she underwent harrowing experiences. Because of the ill-treatment meted out to her by the petitioner, she was forced to stay with her daughter. The husband of respondent No.3 was a public servant and he acquired a property at Shanti Nagar, Masab Tank, Hyderabad in the Government Gazetted Officer's Co-operative Housing Society vide registered document No.1579/1960. The same was given on rent and the said property was yielding substantial rental income. To consolidate her rental earnings and the savings left behind by her husband, respondent No.3 acquired plot No.1205, at Road No.60, Jubilee Hills Co-operative Society, Hyderabad (for short "the subject property") during the year 2003. During her stay with the petitioner, the latter assisted her in concluding the transaction pertaining to the subject property. As the petitioner was the custodian of the family income, all the income of respondent No.3 as well as the original sale deeds and link documents were held by him. In view of her old age, respondent No.3 intends to sell the assets and bestow the sale proceeds amongst her family members. After knowing her said intention, the petitioner attempted to threaten her daughter and grandchildren with dire consequences. With regard thereto, respondent No.3 lodged a complaint before the Station House Officer, Jubilee Hills Police Station on 5-10-

2015 seeking protection. However the police have not registered any FIR as they were acting in support of the petitioner. She approached this Court by filing W.P.No.35233 of 2015 seeking directions to the Police not to interfere with her personal liberty and property and obtained interim direction. Thereafter, respondent No.3 filed application before respondent No.2 under the provisions of the Act seeking eviction of the petitioner from the subject property and for custody of the title deeds.

On the contrary, it is the case of the petitioner that except alleging that she has experienced harrowing incidents, respondent No.3 has not stated the nature of the ill-treatment meted out to her by him. That the petitioner has great love and affection towards her mother i.e., respondent No.3; that their's was a happy family with sufficient resources and that he never belittled respondent No.3 or acted against her wishes. That during the stay of the petitioner at Bahrain, Muscat and Dubai on his avocation and later in U.S.A., his father and respondent No.3 stayed with him all through comfortably. That his father died in the year 1993 intestate leaving behind an old house at Shanti Nagar, Masabtank, Hyderabad and being Class-I heirs, himself and respondent No.3 succeeded to the same. That at the time of the death of his father, Rs.10,000/- per month was being realised as rental income from the Shanti Nagar property from October 1985 till

1993 and during 1995-96, the petitioner and his mother shared the rental income of Rs.22,300/- equally and that respondent No.3 receives about Rs.18,000/- per month towards pension. That the house property at Shanti Nagar remained unoccupied from 1996 to 2006 and as the building was in a dilapidated condition, they decided to demolish the same and raise a commercial building; that accordingly a new building was constructed with Rs.1.2 crores contributed by the petitioner and by obtaining housing loan to a tune of Rs.1.37 crores from the State Bank of Hyderabad, Collectorate Branch, Hyderabad, in the year 2009; that the said building was leased out to M/s. Magna Infotech Pvt. Ltd., initially on a monthly rent of Rs.5.2 lakhs w.e.f., 1-6-2010; that at present they are realising a sum of Rs.7.56 lakhs towards rent from the said property; that out of the said amount, Rs.2 lakhs is being paid towards EMI to the Bank; that the balance amount is being distributed equally between the petitioner and respondent No.3; and that the income-tax on the rental income and the property tax on the said property is being paid exclusively by the petitioner. That on 2-2-2015, respondent No.3 addressed a letter to their tenant for crediting half of the rental income to her Andhra Bank account, Prashashan Nagar Branch and that therefore respondent No.3 was not deprived of any funds. It is further the case of the petitioner that the subject property was purchased by him with his own funds on 27-3-2003 for a sale

consideration of Rs.60 lakhs, vide document No.1055/2003 on the file of SRO, Banjara Hills for the benefit of his daughter; that respondent No.3 never had such a huge amount in the year 2003; that as his daughter was a minor at that time, respondent No.3 lent her name to act as a trustee in the said transaction and therefore the said transaction falls under sub-section (3)(b) of Section 4 of the Benami Transactions (Prohibition) Act 1988; and that he was in lawful possession and enjoyment of the subject property. The petitioner further pleaded that the application filed by respondent No.3 under the provisions of the Act or the Rules made thereunder, is not maintainable; and that respondent No.2 exceeded his jurisdiction and ordered his eviction from the subject property and directed return of documents as prayed by respondent No.3 in her application made under the provisions of the Act.

In the additional affidavit filed by him on 1-2-2016, the petitioner has averred that at the time of the marriage of his daughter in the year 2012, respondent No.3 declared in the presence of all the family members that the subject property is being given as Pasupu-Kumkuma to her. The petitioner has also averred about the improvements made by him in the subject property by investing huge amounts. The petitioner has also alleged that his sisters are enjoying the income of respondent No.3 for their personal benefit and that they are

instrumental in initiating the present litigation against him by respondent No.3.

Respondent No.2, purporting to exercise his jurisdiction under Section 22(2) of the Act, passed the impugned order directing the petitioner to deliver the subject property and the documents relating thereto to respondent No.3, subject however to the orders that may be passed in W.P.No.35233 of 2015.

The Writ Petition was first listed for Admission on 25-1-2016. Respondent No.3 has appeared in person on that day and submitted that though notice was not served on her she has filed counter-affidavit, vide USR No.1736 of 2016. On verification of the record, it was noticed that what was filed by her was "Written Arguments". After hearing both sides, this Court while adjourning the case to 27-1-2016 suspended the impugned order pending further orders. Having regard to the mother and son relationship between respondent No.3 and the petitioner, this Court also suggested that it would be in their own interest to settle the dispute amicably. The petitioner has readily agreed for this suggestion and expressed his willingness to meet his mother-respondent No.3 on the next day, which happened to be a public holiday, being the Republic Day. On the next date of hearing i.e., on 27-1-2016, the learned Counsel for the petitioner stated that inspite of his best efforts to meet respondent No.3, the

petitioner was not allowed to meet her and that he is prepared for settling the dispute on any reasonable terms. Respondent No.3, however, insisted that the case be heard and disposed of on merits. As the parties were not prepared for an amicable settlement, this Court has adjourned the case to 3-2-2016, on which date, the case was heard in part and again adjourned to 9-2-2016, when both the parties have completed their arguments and Judgment was reserved in the case.

Before dealing with the legality or otherwise of the impugned order, it is necessary to refer to the relevant provisions of the Act and the Rules made thereunder.

The long title of the Act shows that the same is intended to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The definitions which are relevant for the present purpose contained under Section 2 of the Act are:

- (a) 'children' includes son, daughter, grandson and granddaughter but does not include a minor.
- (b) 'maintenance' includes provision for food, clothing, residence and medical attendance and treatment.
- (d) 'parent' means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.

- (e) 'prescribed' means prescribed by rules made by the State Government under this Act.
- (f) 'property' means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.
- (h) 'senior citizen' means any person being a citizen of India, who has attained the age of sixty years or above.
- (j) 'tribunal' means the Maintenance Tribunal constituted under Section 7.
- (k) 'welfare' means provision for food, health, care, recreation centres and other amenities necessary for the senior citizens.

Chapter-II deals with maintenance of parents and senior citizens. Under Section 4, a senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to make an application for maintenance. Under Section 5, such application shall be made before the Tribunal. Under this provision, holding of an enquiry and passing an appropriate order are envisaged. Under Section 7, the State Government shall, within a period of six months from the date of commencement of the Act by notification in the official Gazette constitute for each sub-division, one or more Tribunals, as may be prescribed for the purpose of adjudicating and deciding upon the order for maintenance under Section 5 and the Tribunal shall be presided over by an officer not below the rank of a Sub-Divisional Officer of a State. Section 8 prescribed summary procedure in the enquiry and conferred powers of a Civil Court on the Tribunal

for the purposes of taking evidence on oath, enforcing the attendance of witnesses, and compelling the discovery and production of documents and material objects and the Tribunal shall be deemed to be a Civil Court for these purposes. Under Section 9, the Tribunal is empowered to make maintenance at such monthly rate for the maintenance of such senior citizens who as per its satisfaction are unable to maintain themselves subject to a maximum of Rs.10,000/-. Section 11 deals with enforcement of orders of the Tribunal. Chapter-III deals with establishment of old age homes. Chapter-IV deals with provisions for medical care of senior citizens.

Chapter-V of the Act, which is pivotal in the present case, contains only three sections. Under Section 21, the State Government is charged with the duty of taking all measures to ensure that the provisions of the Act are given wide publicity through public media, giving periodic sensitisation and awareness training to the Central and State Government officers on the issues relating to the Act, ensure effective coordination between the services provided by the concerned Ministries and Departments dealing with law, home affairs, health and welfare and to address the issues relating to the welfare of the senior citizens and that periodical review of the same is conducted. Under sub-section (1) of Section 22, the State Government is empowered to confer

such powers and impose such duties on the District Magistrate, as may be necessary to ensure that the provisions of the Act are properly carried out and the District Magistrate may specify the officer subordinate to him who shall exercise all or any of the powers and perform all or any of the duties so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed. Sub-section (2) thereof reads:

“The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

Section 23 of the Act reads :

- (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.
- (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
- (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be

taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of Section 5.

Section 32 of the Act conferred rule making power on the State Government for carrying out the purposes of the Act which include a comprehensive action plan for providing protection of life and property of senior citizens envisaged under sub-section (2) of Section 22. In exercise of this rule making power, the erstwhile State of Andhra Pradesh made rules titled “The Andhra Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2011” (for short “the Rules”) notified by G.O.Ms.No.49, Department of Women, Children, Disabled and Senior Citizens (DW), dated 28-12-2011. Rule 2(f) defined “Presiding Officer” as an Officer appointed to preside over a Maintenance Tribunal referred to under sub-section (2) of Section 7, or an Appellate Tribunal under sub-section (2) of Section 15. Rule 3 provides for appointment of Conciliation Officers by the Tribunal. Rule 4 provides for application for maintenance and its registration before the Presiding Officer. Rule 6 envisages notice to the opposite party. Rule 10 provides for reference to Conciliation Officer. Rule 11 deals with procedure in the proceedings by the Conciliation Officer. Rule 13 deals with action by the Tribunal in other cases where settlement was not reached before the Conciliation Officer.

While all the above mentioned Rules pertain to the aspect of maintenance, Chapter-VI of the Rules deals with protection of life and property of senior citizens. Rule 21 which is included in this Chapter, reads as under :

- (1) The District Superintendent of Police and in the case of cities having a Police Commissioner, such Police Commissioner, shall take all necessary steps, subject to such guidelines as the State Government may issue from time to time, for the protection of life and property of senior citizens.
- (2) Without prejudice to the generality of sub-rule (1),
  - (i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves with the assistance of Volunteers Committee formed under rule 21(2)(iv).
  - (ii) a representative of the police station together, as far as possible, with an office bearer of a senior citizens' organisation or social worker or volunteer shall visit such senior citizens living on their own at regular intervals or atleast once a quarter and shall, in addition, visit them as quickly as possible on receipt of a request for assistance from them.
  - (iii) community policing for the security of senior citizens will be undertaken by Police in conjunction with citizens living in the neighbourhood, Residents' Welfare Association, Youth volunteers, Non Governmental Organisations etc.
  - (iv) one or more Volunteers' Committee(s) shall be formed for each Police Station, consisting of a respectable senior citizen, a member of an accredited NGO, a women member who could be a member of any one of the Government Committees like Child Welfare Committee, a

retired person who has served in uniform service, which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other.

- (v) complaints/problems of senior citizens shall be promptly attended to, by the local Police.
- (vi) antecedents of domestic servants and others to be engaged by senior citizens shall be promptly verified by the concerned Station House Officer with the assistance of concerned Village Administration Officer and/or concerned with Local Level Officers, on the request of such citizens.
- (vii) the District Superintendent of Police or the Police Commissioner, as the case may be, with the assistance of District Committee, with the help of the Assistant Director Welfare of Disabled and Senior Citizens, and District Public Relations Officer, shall cause wide publicity in the media and through the Police Stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens. List of Do's and Don'ts to be followed by senior citizens in the interest of their safety will be widely publicized.
- (viii) each Police Station shall maintain a separate register containing all important particulars relating to offences committed against senior citizens including the names of their children, relatives or legal heirs in such form as the State Government, by order, specify.
- (ix) the register referred to in clause (viii) shall be kept available for inspection, to the members of Voluntary Committee, State Council and District Committee formed under rules 21(2)(iv), rule 22 and rule 23 respectively. Every Officer inspecting a Police Station shall invariably review the status as reflected in the register.
- (x) the Police Station shall send a monthly report of such crimes to the District Superintendent of

Police or the Police Commissioner, as the case may be, by the 10<sup>th</sup> of every month.

- (xi) the District Superintendent of Police/Commissioner of Police shall submit to the Director General of Police and to the District Magistrate, a monthly report by 20<sup>th</sup> of every month, about the status of crime against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month.
- (xii) the District Magistrate shall cause the report to be placed before the District Level Coordination-cum-Monitoring Committee constituted under rule 23.
- (xiii) the Director General of Police shall cause the reports submitted under clause (xi) to be compiled, once in a quarter, and shall submit them to the State Government every quarter as well as every year for being placed before the State Council of Senior Citizens constituted under rule 22.

The scheme underlying the above noted provisions of the Act and the Rules can be analysed as under. The Act provides for maintenance and welfare of parents and senior citizens. It deals with maintenance and welfare of senior citizens under different Chapters. While under Chapter-II, maintenance is included, (a) welfare of senior citizens by establishment of old age homes, (b) provisions for medical care of senior citizens and (c) protection of life and property of senior citizens, are covered by Chapters III, Chapter-IV and Chapter-V, respectively. As far as protection of property of a senior citizen, which is the subject matter of the present Writ Petition is concerned, as noted supra, under Rule 20 of

Chapter-V of the Rules, duties and powers of the District Magistrate are envisaged, which include ensuring protection of life and property of senior citizens so that they are able to live with security and dignity. Sub-section (2) of Section 22 mandated that the State Government shall prescribe a 'comprehensive action plan' for providing protection of both life and property of a senior citizen. Accordingly, the State Government envisaged a separate action plan for protection of life and property of senior citizens under Rule 21 falling under Chapter-VI of the Rules.

On a proper analysis of these provisions, it is clear that while the power of ordering maintenance to the parents and senior citizens is exclusively conferred on the Presiding Officer of the Tribunal constituted under Section 7 falling under Chapter-II of the Act, a separate action plan has been envisaged for protection of life and property of senior citizens under Chapter V thereof. Under this action plan, the Presiding Officer of the Tribunal has no role to play at all. The only provision under which the Tribunal is conferred with the jurisdiction to intervene in the matter of property of senior citizens is under Section 23 of the Act. As could be seen from the provisions of the said Section reproduced above, in cases where transfer of any property by way of gift or otherwise was made by a senior citizen subject to the condition that the transferee shall provide the basic amenities

and basic physical needs to such senior citizen and the transferee refuses or fails to provide the same, the Tribunal can exercise its jurisdiction to declare such transfer void at the option of the senior citizen concerned as the same shall be deemed to have been made by fraud, coercion or under undue influence. The Tribunal can also enforce the right to receive maintenance against a transferee, out of the estate of a senior citizen or part thereof which is transferred, if he has notice of the right or if the transfer is gratuitous, but not against a transferee for consideration and without notice of such right.

Indisputably, in the present case, there is no transfer of property by respondent No.3 in favour of the petitioner at any point of time. Though the subject property is registered in the name of respondent No.3, it is the specific case of the petitioner that he has paid the sale consideration through cheques issued by him out of his own earnings. However, respondent No.3 maintained that as the petitioner was looking after the finances of the family, he has issued the cheques though the money belonged to herself. As noted supra, it is the further pleading of the petitioner that respondent No.3 is holding the property as a benami for him and therefore the transaction falls under sub-section (3)(b) of Section 4 of the Benami Transactions (Prohibition) Act 1988. It is neither appropriate nor necessary to resolve this dispute

in the present proceedings as the fact remains that no transfer of property in favour of the petitioner by respondent No.3, and that too after commencement of the Act, has taken place. Therefore, on the undisputed facts of the case, Section 23 of the Act is not attracted. Indeed, respondent No.2 has also not exercised his power under the said provision, but under Section 22(2), which will be adverted to infra. When the dispute falls outside the scope of the said provision, the Tribunal has no jurisdiction whatsoever to entertain and adjudicate any other kind of dispute pertaining to the property of a senior citizen in the absence of any provision under the Act or the Rules conferring such jurisdiction on it. The question as to whether the phrase 'protection' occurring in sub-section (2) of Section 22 of the Act and Chapter-VI of the Rules includes power to order eviction of a person in physical possession of the property claimed by a senior citizen and handover the same to him/her, is a moot question which need not be adjudicated in the present case as the impugned order was not passed in terms of the action plan under Rule 21 of the Rules, but dehors the same. This is evident from the fact that respondent No.3 has made her application under Chapter-V of the Act and respondent No.2 has relied upon sub-section (2) of Section 22 of the Act. Respondent No.2 has, however, lost sight of the fact that the State Government has come out with an action plan vide G.O.Ms.No.49, dated 28-12-2011

under the said provision and in that action plan he figures nowhere. Therefore, respondent No.2 has no jurisdiction whatsoever to allow the application made by respondent No.3 for the reliefs of evicting the petitioner and handing over of title deeds kept in his custody to her.

Respondent No.3 has placed heavy reliance on the Division Bench Judgment of the Punjab and Haryana High Court in **Justice Shanti Sarup Dewan and another Vs. Union Territory, Chandigarh and others**<sup>[1]</sup>. The facts in that case are that the appellants therein who were a couple and senior citizens, had one son and two daughters. Property bearing H.No.642, Sector 11-B, Chandigarh, was purchased by appellant No.1 under conveyance deed dated 29-3-1962 in his own name. He has made additions and alterations to the said house by withdrawing Rs.20,000/- from his G.P. fund. Appellant No.1 has also bought Plot No.694, Sector 6, Panchkula for the benefit of his son and the said plot was transferred to the latter on 30-11-1990. The son of the appellants sold the said plot on 7-11-1991 and from a part of the sale proceeds therefrom he has purchased a plot in Sector 2, Panchkula and constructed a house by utilising the balance sale proceeds. In spite of possessing his own house, the son of the appellants started living with the latter. Simmering differences arose between the appellants and their son and as the appellants found the harassment by their

son and daughter-in-law intolerable, they filed a Writ Petition in the Punjab and Haryana High Court. A learned single Judge opined that as the issue of eviction of the son of the appellants needs to be adjudicated by a competent Civil Court, the Writ Petition was not an appropriate remedy. The Division Bench, however, granted relief to the appellants applying the provisions of the Act. It is worthy to note that by the time the said case was decided by the Punjab and Haryana High Court, the Administration of Union Territory, Chandigarh has not framed rules under Section 22(2) of the Act or under Section 32(2)(f) thereof and consequently no action plan was envisaged. The Division Bench, while finding that the son of the appellants had absolutely no right whatsoever to live with his parents in the house which was acquired solely from out of the earnings of appellant No.1, further observed that a proper mechanism for enforcement of the provisions of the Act for protecting the property rights of the appellants under Section 22 of the Act has not been put in place by the Union Territory Administration. Expressing its thorough dissatisfaction on the failure of the Administration of Union Territory in effectuating the provisions of the Act and enforcing the rights of senior citizens, the Court felt that it was not helpless if the State fails to perform its functions envisaged under the Act and it accordingly directed the appellants' son to vacate the house belonging to his parents.

It needs to be noted that the Division Bench of the High Court, in the **Justice Shanti Sarup Dewan (supra)**, has not made detailed discussion on the contours of sub-section (2) of Section 22 of the Act. Evidently, such a question was not put in issue before it, more so, in the absence of an action plan put in place for protection of senior citizens by the Administration of the Union Territory of Chandigarh. In contrast, the jurisdiction of the Tribunal in the present case is well defined by the Rules. As noted herein before, the Tribunal is excluded from the action plan provided under Rule 21 of the Rules for protection of the property of senior citizens. Unless the case falls directly under Section 23 of the Act, the Tribunal cannot exercise its power for adjudicating the disputes concerning the properties of senior citizens.

On the analysis as above, this Court has no hesitation to hold that the impugned order is ultra vires the powers of respondent No.2 and the same is accordingly quashed, leaving respondent No.3 free to approach the competent Court of law for enforcement of her rights and redressal of her grievance *qua* the subject property.

Subject to the liberty given to respondent No.3 as above, the Writ petition is allowed.

As a sequel to the disposal of the Writ Petition, WPMP No.2545 of 2016 filed for interim relief is disposed of as

infructuous.

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Justice C.V. Nagarjuna Reddy

Date : 04-03-2016

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[\[1\]](#) Laws (P&H)-2013-9-528 – L.P.A.No.1007 of 2013, dt.26-09-2013, High Court of Punjab & Haryana