

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**ORDER**

**(1) Mohan Lal Sukhadia University  
Vs.  
Municipal Council, Udaipur & Ors.  
S.B. CIVIL WRIT PETITION NO.2573/2013**

**(2) Rajkumar Taya Vs. State of Raj. & Ors.  
S.B. CIVIL WRIT PETITION NO.342/2013**

Writ Petitions under Article 226 of the Constitution of India

Date of Order: December 17, 2014.

**PRESENT**  
**HON'BLE MR. JUSTICE P.K. LOHRA**

Mr. M.R. Singhvi, Sr. Advocate with Mr. Deelip Kawadia & Mr. Mohit Singhvi, for petitioner in Civil Writ Petition No. 342/2013 and for respondent in Civil Writ Petition No. 2573/2013.

Mr. G.R.Punia, Sr. Advocate with Mr. Dinesh Jyani, for petitioner in Civil Writ Petition No. 2573/2013 and for intervener in Civil Writ Petition No. 342/2013

Mr. Vivek Vyas, intervener, present in person.

Mr. Sriram Choudhary, for the intervener.

Mr. Anurag Shukla, for respondent Municipal Council in both the writ petitions.

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**Reportable**

**BY THE COURT:**

Battle for supremacy has prompted Mohan Lal Sukhadia University, Udaipur and Rajkumar Taya to lock horns against each other with full gusto in these two inter-linked writ petitions.

The genesis of these two petitions, may be for a tiny cause, has been blown out of proportion by the enthusiasm of the litigating parties. Bone of contention herein is registration of "Marriage

Palace" (for short, "Vatika") under Marriage Palace Registration Bye-laws, 2010 (for short, 'Bye-laws of 2010') at Champa Bagh, Tehsil Girwa, District Udaipur – a City of Lakes. University, on the one hand is putting stiff resistance against the registration, Mr. Rajkumar Taya on the other hand is battling hard for securing registration.

In view of order of this Court, dated 22<sup>nd</sup> May 2013, both the petitions are heard together and disposed of by this common order.

FACTS PERTAINING TO CIVIL WRIT NO.2573/2013

Petitioner, Mohan Lal Sukhadia University, Udaipur (for short, "University") in Writ Petition No.2573 of 2013 has assailed order dated 13<sup>th</sup> February 2013 (Annex.6) passed by Commissioner, Municipal Council, Udaipur, whereby registration of Vatika is accorded in favour of third respondent Rajkumar Taya (for short, 'Taya'). With a view to impugn order Annex.6, University has pleaded in its petition under-mentioned facts.

It is, inter-alia, averred in the writ petition that the State Government issued a Notification on 3<sup>rd</sup> October 1981 under Section 4 of the Rajasthan Land Acquisition Act 1953 for acquiring land bearing Araj Nos. 1025, 1026, 1017, 1018 and 1022 situated at Girdanba Sahar, Tehsil Girwa, District Udaipur for development and expansion of the University. Notification under Section 4 was published in Gazette on 30<sup>th</sup> October 1981. Subsequent to that, a declaration under Section 6(4) was issued while resorting to Section 17(4) of the Act on 29<sup>th</sup> September 1994. The acquisition proceedings were challenged before this Court by five separate writ petitions and the Court was pleased to allow all these writ petitions

by quashing the declaration under Section 6(4) by its judgment dated 10<sup>th</sup> April 2007. It was observed by the Court that State Government has invoked emergent powers under Section 17(4) of the Act without any basis and directed the competent authority to consider the objections of the writ petitioners under Section 5A of the Act objectively and dispassionately. Pursuant to the judgment of this Court, SDO Girwa, District Udaipur considered the objections of the concerned persons and forwarded report under Section 5A of the Act to District Collector, Udaipur for placing it before the State Government for further proceedings on 30<sup>th</sup> May 2007. Against the judgment of learned Single Judge, Kalayan Singh and others preferred intra-Court appeal, which was registered as SAW No.679 of 2007, and the order passed by the learned Single Judge was stayed. It is averred in the writ petition that in these proceedings respondent No.3 Taya was not a party to the litigation.

Now adverting to the lis involved in the present matter, it is pleaded by the University that third respondent Taya submitted an application under Bye-law 7 of the Bye-laws of 2010 for registration of Vatika before Municipal Council, Udaipur. The Municipal Council considered the application of third respondent and a notice inviting objections was issued. On behalf of University and some other incumbents, objections were submitted and finally the Municipal Council rejected the application of third respondent on 2<sup>nd</sup> November 2012. Mr. Taya being aggrieved from said order challenged it before State Government and the State Government while quashing the order of Municipal Council remanded the matter back for deciding application of third respondent afresh with certain

guidelines. The remand order is challenged by Mr. Taya by way of connected Civil Writ No.342 of 2013 wherein University was not joined as a respondent. In Writ Petition No.342/2013, certain directions were issued by the Court to Municipal Council, Udaipur for deciding the application of Taya after remand order and pursuant to the same, Commissioner, Municipal Council, Udaipur, decided his application by order dated 13<sup>th</sup> February 2013 whereby registration is accorded in his favour. As per version of University, it has made sincere endeavour for being impleaded as party respondent in Writ Petition No.342/2013. In the same breath, the University has submitted that being aggrieved of order dated 13<sup>th</sup> February 2013, it has preferred this writ petition. In totality, the solitary ground set out by the University in the writ petition for impugning order dated 13<sup>th</sup> February 2013 is the fact that proceedings for acquisition of the said land is still pending consideration.

Mr. Taya submitted his reply to the writ petition, wherein certain preliminary objections are also raised. Taya has questioned locus of the University to maintain the petition. While referring to the notice inviting objections before registration of Vatika, it is submitted by Mr. Taya that after consideration of objection, University cannot maintain the present writ petition as a complainant, as its right as a complainant stands consumed and now at its behest the writ petition is not tenable. Adverting to the acquisition proceedings, Taya has submitted that those proceedings have not attained finality so as to confer any right, title or interest in favour of University. Alleging specifically in the reply that still the situation is fluid as the acquisition proceedings are under challenge,

the University cannot maintain the writ petition solely on the basis of initiation of acquisition proceedings by the State Government. Joining issue with the University on factual aspects, Mr. Taya has submitted that the requisite order for registration of Vatika is rightly accorded by the Municipal Council and the said order is not liable to be interfered with at the behest of University. While referring to order Annex.6, it is submitted on behalf of Taya that the order itself is clear that objections submitted by the University were considered by competent authority and have been rejected. As far as the application submitted by University for being impleaded as party respondent in Writ Petition No.342/2013 is concerned, Taya has submitted in reply that the application has been rejected and University has been simply permitted to intervene in the matter without right to file pleadings.

No reply on behalf of Municipal Council is submitted.

#### FACTS CONCERNING CIVIL WRIT NO.342/2013

In Civil Writ Petition No.342/2013, petitioner Rajkumar Taya has challenged order dated 2<sup>nd</sup> of November 2012 (Annex.18) whereby his application for registration of Vatika is rejected, and the order dated 12<sup>th</sup> of December 2012 (Annex.20) by which State Government while deciding his revision petition has remanded the matter back for reconsideration of his application for registration of Vatika with certain directions. Apart from challenging these two orders, Mr. Taya has also prayed for annulment of proceedings dated 10<sup>th</sup> October 2012 (Annex.16) qua him and further direction is also sought for registration of his Vatika under the Bye-laws of 2010. In

his writ petition, it is inter-alia averred that a land measuring 41200 sq.ft. is transferred to him under an agreement to sale dated 3<sup>rd</sup> April 1981 and since then it is within his power and possession. After putting in possession, as per Mr. Taya, he has invested huge amount for development of the land and created requisite infrastructure for its utilization to arrange marriage ceremonies, social events and other religious functions. As per Mr. Taya, he has taken utmost care for safety and welfare of persons residing nearby and has also provided adequate parking space besides a well-developed garden. The agreement to sale is executed by power of attorney holder of the owners of the property and for proving it original power of attorney as well as agreement to sale is also placed on record. While switching on to the sequence of events, Mr. Taya has averred in the writ petition that when agreement to sale was in vogue and it was about to be culminated into a valid document of sale, the proceedings for acquisition of land came into offing and that has infact prevented final documentation in relation to title of the land in question. On the issue of land acquisition, the averments in the writ petition are pari-materia to Civil Writ No. 2573/2013 and Mr. Taya has pleaded with emphasis that acquisition proceedings are still inconclusive and hanging in balance. Mr. Taya has once again reiterated his right to use, enjoy and occupy the land in question in terms of agreement to sale dated 3<sup>rd</sup> April 1981 and has asserted that he is enjoying the same without any hindrance or objection by any other person.

It emerges out from the pleadings that Municipal Council purported to frame bye-laws to regulate registration of Vatikas etc

and bye-laws were published in Gazette on 2<sup>nd</sup> May 2006. As there were certain onerous conditions in the bye-laws, besides many other pitfalls, the bye-laws were challenged before this Court by way of writ petitions. In one of the petitions, interim order was made directing Municipal Council, Udaipur to consider all technical aspects suggested by the aggrieved person and to do needful. In adherence of the interim direction of the Court, petitioner Taya and some other incumbents submitted their objections and suggestions for framing proper bye-laws, however, the Court also directed the Municipal Council to register all Vatikas within the prescribed period by accepting initial licence fee of Rs.5,000/-, and pursuant thereto Mr. Taya also deposited initial fee and applied for registration. The objections submitted by various persons were objectively examined by Municipal Council, Udaipur and a decision was taken to revise, reframe and amend the bye-laws and eventually Bye-laws of 2010 came into effect which were published in Gazette on 13<sup>th</sup> May 2010. In terms of Bye-laws of 2010, initial registration fee is fixed at Rs.20,000/- with a stipulation for computing final amount @Rs.20 per sq.yard. Pursuant to Bye-laws of 2010, Mr. Taya submitted his application for registration on 21<sup>st</sup> September 2010 with requisite annexures and also deposited Rs.20,000/- on 7<sup>th</sup> February 2012. On receipt of the application, Municipal Council published a notice in newspaper inviting objections. The requisite notice is published in daily newspaper "Rajasthan Patrika" dated 10<sup>th</sup> February 2011, wherein Taya's application was shown at serial No.11. In response to the notice, many incumbents submitted their objections. The positive assertion of Mr. Taya is that in terms of Bye-laws of 2010 he was fulfilling all the requirements for registration of Vatika but

without examining the application objectively, a communication is addressed to him on 13<sup>th</sup> July 2012 raising certain objections about his entitlement to get Vatika registered. As per communication dated 13<sup>th</sup> July 2012, a decision to Taya's detriment is taken due to some complaints made by Mr. Suresh Mehta and Deepak Jain etc before the Collector (Vigilance) and it was the Vigilance Committee, which has decided in its meeting dated 30<sup>th</sup> June 2012 not to register Vatikas having width of road less than 40 ft and area exceeding 2000 sq.yards. Being aggrieved from the rejection of his application, Mr. Taya preferred an appeal before the Chairman, Municipal Council, Udaipur as per Bye-laws of 2010 and the Chairman allowed the appeal on 5<sup>th</sup> September 2010 by remanding the matter back to the Municipal Commissioner, Udaipur. The Chairman, in its order has observed that the width of the road is more than 40ft and therefore order rejecting the application of Taya cannot be sustained. In the interregnum, when the appeal of Mr. Taya was pending, proceedings were drawn by the Municipal Council and he was permitted to operate Vatika by accepting requisite registration fee from him. With these facts, Mr. Taya has urged that his Vatika is liable to be registered in terms of Bye-laws of 2010. While maintaining his eligibility for registration of Vatika in terms of Bye-laws of 2010, it is averred in the writ petition that without examining the factual aspects of the objections raised against registration of Vatika, the Municipal Council in its General Body Meeting dated 10<sup>th</sup> October 2012 took a decision to his detriment. In the meeting, what has transpired was nothing but consideration of certain objections qua petitioner Taya, which were not at all relevant and germane to the matter. As per the minutes of the



meeting, it is impressed upon that there is some interim stay order by the Court against operation of Vatika and that has finally culminated into a decision to Taya's disadvantage vis-à-vis registration of Vatika, and Resolution No.6.2 was adopted. Mr. Taya has raised many objections for consideration of the issue in General Body Meeting on the anvil of Conduct of Business Rules, 1974 and the fact that subject matter was not on the agenda for consideration of General Body. Be that as it may, the majority decision of the General Body paved the way for rejection of Taya's application for registration of Vatika and the same was conveyed to him on 2<sup>nd</sup> November 2012 (Annex.18). Feeling dismayed with the said order, Taya approached the State Government under Section 192 read with Section 327 of the Rajasthan Municipalities Act 2009. The appeal/revision of Taya is decided by the State Government by remanding the matter back to Municipal Council, Udaipur with certain directions. According to Mr. Taya, the State Government has not exercised its jurisdiction appropriately and has virtually kept him high and dry to run from pillar to post. Taya's affirmative assertion is that while remanding the matter back, State Government has not even cared to set aside the order passed by Municipal Council, Udaipur, which is sufficient to vitiate the order of remand. Taking shelter of Bye-laws of 2010, Taya has submitted that under the bye-laws it is envisaged with clarity and precision that application for registration of Vatika is to be decided within 30 days but in his case it is being kept pending for prolonged duration just to harass and humiliate him. With these averments, Mr. Taya has prayed for quashing of the impugned orders and sought a direction against the Municipal Council for according registration of Vatika in his name.

Respondent Municipal Council contested the matter and filed its reply. In the return, a specific objection is raised about maintainability of the writ petition on the ground that pursuant to remand order notices have been issued and the matter has been re-opened, therefore, petition is not tenable. The document, on which Mr. Taya has placed heavy reliance for seeking registration of Vatika, is also questioned on the anvil of the fact that it is insufficiently stamped and unregistered though required to be registered compulsorily under Section 17 of the Indian Registration Act 1908. While advertng to the merits of the case, the respondent Municipality raised serious objection in connection with the title of Mr. Taya on the land in question in want of registered instrument of sale. Alongwith the reply, objections submitted by the University against registration of Vatika craved by Mr. Taya is also submitted. Factum of pendency of acquisition proceeding is also asserted in the reply. On other factual aspects, it is submitted in the reply that road facing Vatika is not fulfilling the mandatory requirement of the requisite width of 40ft. While joining issue with Mr. Taya on the resolution by the Members of the Municipal Council, it is averred in the reply that in the motion when the Members participate in deliberations, any matter which is concerned with the interest of public at large can be raised. Precisely, the respondent Municipal Council has submitted that it is not worthwhile to exercise extraordinary jurisdiction against the remand order passed by the State Government.

After submission of reply to the writ petition, Mr. Taya

submitted his rejoinder and reiterated the averments contained in the writ petition. To meet preliminary objections, it is averred in the additional pleadings that remand order is not in consonance and in conformity with the guidelines traceable from Order 41 Rule 23 CPC. It is also submitted in the reply that appellate authority is expected to modify or reverse the matter and jurisdiction to remand the matter is to be resorted to in exceptional cases. As regards the title, Mr. Taya has pleaded that Municipal Council is not expected to question the same when his predecessor-in-title has put him in possession in accordance with law and has never disputed the factual position in any manner. A copy of registration certificate issued in respect of Amrit Vatika dated 07.02.2010 is also placed on record to assert that for registration of a Vatika registered instrument is not necessary. While advertng to the objection submitted by the University, Mr. Taya has submitted in the rejoinder that simply because acquisition proceedings are pending, University has no locus to submit objection in respect of his land. On the issue of width of the road, Mr. Taya has submitted that the Chairman while remanding the matter has concluded in clear and unequivocal terms that width of the approach road facing Vatika is 47 ft., which cannot be disputed by the Municipal Council. Mr. Taya has also submitted in the rejoinder that requisite amount of licence fee has been received by the Municipal Council and therefore now it is not open for it to deny requisite registration to him. Besides that, many other aspects, which are pleaded in the return, are dealt with in the rejoinder. In the additional plea, it is also submitted that the respondent Municipal Council has shown scant regard to the orders of the Court inasmuch as copy of stay order has not been produced,

whereby it is restrained from taking decision on the application of Taya for registration of Vatika.

After submission of additional pleadings, Mr. Taya has filed additional affidavit along with copy of order dated 01.05.2009, which was passed in a suit filed by the intervener Vivek Vyas on an application under Order 39 Rule 1 & 2 CPC.

Yet another additional affidavit is filed by Mr. Taya on 18<sup>th</sup> July 2014 with certain annexures. Order of registration of Vatika issued in the name of Neeraj Gattani is also produced with the additional affidavit with the assertion that case of Neeraj Gattani is identical and at par with Taya and on that count he has claimed parity for seeking registration of Vatika.

On behalf of respondents No.1 & 2, no formal reply to the writ petition is submitted.

The matter came up before the Court on 10<sup>th</sup> of January 2013 and while issuing notices, the Court was pleased to pass following order:

“Heard learned counsel for the petitioner.

Issue show cause notice to the respondents. Copy of this order may also be sent to the respondents along-with notice.

Rule is made returnable within one week.

“Dasti”. Direct service permitted.

Mr. B.S. Bharan, is the standing counsel for Municipal Council, Udaipur. He is directed to accept notices on behalf of respondent Municipal Council, Udaipur besides

service in regular course. His name be shown in the cause list.

Counsel to file proof of service on the respondents, and not merely proof of dispatch of notices, before the next date positively. In the alternative, affidavit of the counsel/party of compliance to the extent made, be filed.

Additionally, copy of writ petition may be supplied to Mr. B.S. Charan, learned standing counsel for Municipal Council, Udaipur. Municipal Council, Udaipur may specifically produce the copy of the stay order, if any, granted by any court against the case of the petitioner, which may have effect on its registration and for consideration of his application as a marriage place under the relevant Bye-laws.

Put up on 17.01.2013, as prayed.”

Once again, when the matter came up before the Court on 28<sup>th</sup> January 2013, following order was made:

“The learned counsel for the respondents submitted that upon remand by the Secretary of the Government Department by the impugned order (Annex.20), the Municipal Board will take decision in the matter within 3 days from today. He, therefore, prayed that the petitioner may be asked to appear before the competent authority on 31.1.2013 because objectors in the matter may also be informed about the said date and they may also be heard before final order in pursuance of impugned order is passed by the competent authority.

All the concerned parties including the petitioner may appear before the Commissioner, Municipal Council, Udaipur on 31.1.2013 and after hearing them, the said authority may pass appropriate speaking order.

Put up on 6.2.2013”.

Lastly, on 11.02.2013, Court passed following order:

“If Municipal Council, Udaipur fails to take decision in the matter with regard to application of the petitioner by 13.02.2013 at Commissioner’s level or Board’s level, the Commissioner of Municipal Council, Udaipur shall remain present in this Court on 14.02.2013 at 10.30 AM.

Put up on 14.02.2013.”

When the matter came up before the Court on 14<sup>th</sup> February 2013, the counsel for Municipal Council, Udaipur submitted copy of order dated 13.02.2013, whereby registration of Vatika was accorded in favour of Mr. Taya. This sort of situation was obviously a cause of indignation for the University, which made endeavour to be impleaded as party respondent by way of filing application before the Court. The Court, thereupon construing the aforesaid order of registration of Vatika, found it prima facie de hors the Bye-laws of 2010 and taking suo moto cognizance of the sequence of events ordered for keeping the order in abeyance. In the same order, while disposing of the applications submitted by the University and other incumbents, the Court was pleased to permit the University, Mr. Vivek Vyas, Bhuvnesh and Sureshmal Mehta to intervene in the matter, however, declined their prayer for their impleadment as party respondents. In Paragraph 20 of the order dated 26<sup>th</sup> February 2013, the Court observed as under:

“20. Thus, this court is of the considered opinion that the applicants should be allowed to intervene in the matter so as to have a right of say in the present lis at the time of final hearing of the writ petition but they will not have any right to file any pleadings and they may not be impleaded as respondents in the present writ petition, expanding its scope unnecessarily.”

At this stage, it is just and proper to observe that although intervener Mr. Vivek Vyas submitted affidavit and some documents to justify his interjection against registration of Vatika but by virtue of order dated 26<sup>th</sup> February 2013, quoted hereinabove, it is not

worthwhile to examine that part of the pleadings as well as documents, however, the Court feels that the documents annexed therein may be referred to clarify some of the factual aspects during arguments by the learned counsel for the parties keeping in view status of the individuals as interveners.

SUBMISSIONS MADE BY LEARNED COUNSELS IN CIVIL WRIT NO.2573 OF 2013

Learned Senior Counsel for the University, Mr. G.R. Punia, in Civil Writ Petition No.2573/2013, submits that the impugned order Annex.6 passed by the Commissioner, Municipal Council, Udaipur, is laconic on the face of it inasmuch as the same has not been passed in adherence of the guidelines and directions issued by the State Government while remanding the matter back. Learned counsel Mr. Punia would contend that the State Government, after examining the matter threadbare, exercised its discretion to remand the matter back to Municipal Council, Udaipur for passing appropriate order on application of Taya for registration of Vatika while formulating seven guidelines/points, however, none of them are adhered to by the Commissioner, Municipal Council while passing the order according registration of Vatika in favour of Taya. Therefore, the substance of submission of Mr. Punia is that order impugned cannot be sustained. Learned counsel further submits that the order impugned is not a speaking order as no reasons are assigned for taking an affirmative decision favouring cause of third respondent Taya. Learned counsel has also urged that there is serious dispute about title of third respondent Taya on the land in dispute and while referring to ongoing litigation between intervener

Vivek Vyas and Taya, it is urged by the learned counsel that the Commissioner, Municipal Council, Udaipur has not at all cared to examine Bye-laws 4 & 6 of the Bye-laws of 2010 inasmuch as no proper enquiry was conducted for ascertaining the alleged title deeds of Taya before according registration. Learned counsel has also made an attempt to castigate Taya for producing spurious documents in order to secure registration of Vatika. Mr. Punia has also argued that there are proofs to this effect that Taya has made encroachment on part of the road and public park and the objections submitted by the University as well as other incumbent Mr. Vivek Vyas are not examined by the Commissioner, Municipal Council, Udaipur appropriately. Elaborating his submissions, Mr. Punia has urged that in want of valid title, prayer of Taya for registration of Vatika is not at all tenable as per Bye-laws of 2010. Mr. Punia has further submitted that may be the land acquisition proceedings are hanging in balance but the fact remains that State Government intended to acquire said land for infrastructural development of the University and therefore University is well within its right to raise objection against the grant of registration for Vatika on land in question.

Taking a dig at order Annex.6, Mr. Punia would contend that Commissioner, Municipal Council, Udaipur has passed the order as if the Court has directed it to decide the matter favouring the cause of respondent Taya. Elaborating his submissions in this behalf, Mr. Punia submits that the order has been passed mechanically without application of mind and therefore it is not sustainable. Mr. Punia has also made an attempt to castigate the order as without



jurisdiction by urging that in terms of remand order decision ought to have been taken by Municipal Council and not by the Commissioner. He further submits that Chairperson of the Municipal Council in terms of remand order was not competent to authorize the Commissioner to pass the order. Lastly, Mr. Punia has urged that in view of stay order passed by the Coordinate Bench, against according registration of Vatika, the order has lost significance for all practical purposes. It is also submitted by Mr. Punia that upholding of the stay order by the Division Bench further re-enforces his assertion that the order impugned is not in consonance and conformity with the Bye-laws of 2010. In support of his contentions, Mr. Punia has placed heavy reliance on the stay order granted by the coordinate Bench and its affirmation by the Division Bench. While deciding appeal of Mr. Taya against the stay order, the Division Bench made following observations:

“We are of the opinion that while exercising powers under Article 226 of the Constitution of India, the court can very well look into validity of an order available on record, though may not have been challenged by any party and also bonafides of a public officer in exercising his authority. Learned Single Judge on the basis of the facts available made a prima facie opinion about justifiability of the order dated 13.02.2013. Suffice to mention that during the course of arguments, we also came to know through Mr. G.R. Punia, learned Senior Advocate, that a petition for writ has also been filed before this court by Mohan Lal Sukhadia University, Udaipur giving challenge to the order dated 13.02.2013 and in that petition for writ too an interim order has been passed staying operation of the order granting registration of “Sajan Vatika” and while granting the interim order, an order has also been passed to connect that writ petition with the writ petition from which the present appeal is arising.

Having considered all these facts, we are not at all inclined to interfere with the order impugned. The appeal is dismissed, accordingly. S.B. Civil Writ Petition No.342/2013 and S.B. Civil Writ Petition No.2573/2013 are required to be heard together”.

Learned Senior Counsel Mr. Singhvi, for Mr. Rajkumar Taya, submits that the University is having no locus-standi to maintain petition as it cannot be construed as an aggrieved person against the impugned order Annex.6. Stoutly defending the impugned order Annex.6, whereby Vatika of Taya is permitted to be registered under the Bye-laws of 2010, Mr. Singhvi would contend that the competent authority has considered all the pros & cons and thereafter issued the aforesaid order which cannot be assailed at the behest of a busybody like the University. Mr. Singhvi submits that Vatika is in existence since last 40 years and at one point of time it was registered under the old Bye-laws of 2004, therefore, challenge thrown to the impugned order by the University is not sustainable. While referring to the pleadings, learned counsel submits that for laying challenge to Annex.6 the averments are absolutely vague, cryptic and unspecific and on the strength of such laconic pleadings no indulgence can be granted to the University. Mr. Singhvi has vociferously urged that the University has made an affirmative attempt to mislead the Court by concealing material fact about the fate/outcome of the application laid on its behalf in Writ Petition No.342 of 2013 for impleadment, which was rejected and it was simply permitted to intervene without filing pleadings. Therefore, harping on the conduct of the petitioner, learned counsel has argued that the University is liable to be non-suited solely on the ground of its conduct. Mr. Singhvi submits that as a matter of fact, a bare reading of the petition ipso facto reveals that the University has failed to disclose any cause of action for maintaining the writ

petition. Learned counsel with full emphasis submits that the status of the University at best is of an objector to oppose the registration of Vatika under the Bye-laws of 2010 and as such there is no question of infringement of any of its legal rights and as a complainant it has no locus to question the order of registration. The substance of submission of Mr. Singhvi is that in the matter of registration of Vatika, University was neither a necessary, nor a proper party. In support of his contentions, Mr. Singhvi has placed reliance on following three decisions of this Court:

- Ramji Lal v. State & Ors., 1985 RLR 644.
- Surendra Kumar Garg and Ors. v. State of Rajasthan and Ors., 2005 (1) WLC (Raj.) 243 (DB).
- Meena Vyas v. State of Rajasthan and Anr., 2009 RLW 870.

Joining issue with the petitioner on the question of acquisition proceedings, Mr Singhvi submits that acquisition proceedings are hanging in balance due to pending litigations and mere initiation of acquisition proceedings, may be for development of the University, has not created any right much less legal right in its favour to maintain a petition. Countering the argument of the learned counsel for the University about title, Mr. Singhvi would submit that title of Mr. Taya cannot be questioned by the University for the reason that even predecessor-in-title of Mr. Taya has not raised eye-brow about his title. Mr. Singhvi submits that the recitals contained in agreement to sale clearly and unequivocally reveals that the entire consideration amount is paid by Mr. Taya and the final documentation could not come into offing due to initiation of land acquisition proceedings. He further submits that since the date of execution of agreement to sale, Mr. Taya is in possession and

enjoying the property, therefore, his right to apply for registration of Vatika is unquestionable within the four corners of Bye-laws of 2010. Mr. Singhvi has also submitted that after promulgation of the new Land Acquisition, Rehabilitation and Resettlement Act 2013, the proceedings which were initiated under the Act of 1953 have lapsed by virtue of Section 23 of the Act of 2013 as no proceedings were taken under Section 16 of the Act of 1953. Mr. Singhvi has also argued that Mr. Taya is using the land for lawful purpose and in the same locality other Vatikas, which are part of the same land, are operating as such there is absolutely no reason for the University to object registration of Vatika of Mr. Taya. While referring to Bye-law 6 of the Bye-laws of 2010, learned counsel submits that whole object of examining the title of the incumbent aspirant for registration of Vatika is to examine his title vis-à-vis the real owner and not vis-à-vis a stranger like the University. While referring to the conditions for registration, as enumerated in the prescribed proforma, learned counsel submits that it will not confer any title but it will simply facilitate use of the land as Vatika and therefore the order Annex.6 passed by the competent authority to this effect is in consonance and conformity with the Bye-laws of 2010 which warrants no interference. On the issue of conduct of University, learned counsel has placed reliance on two judgments of Hon'ble Apex Court in case of Dr. Vijay Kumar Kathuria v. State of Haryana & Ors., AIR 1983 SC 622, and Welcom Hotel and Ors. v. State of Andhra Pradesh and Ors., AIR 1983 SC 1015. Lastly, Mr. Singhvi submits that contention of the learned counsel for the University that order impugned is without jurisdiction is bereft of any merit inasmuch as no such ground has been urged in the writ petition,

and in want of requisite factual foundation in the pleadings, such argument cannot be sustained.

Mr. Anurag Shukla, learned counsel for respondent Municipal Council, Udaipur, submits that the order impugned is passed in accordance with law without deciding title of the incumbent as per Bye-laws of 2010 and therefore it requires no interference.

SUMMISSIONS OF THE LEARNED COUNSELS IN CIVIL WRIT NO.342 OF 2013

Mr. M.R. Singhvi, learned Senior Counsel with Mr. Deelip Kawadia for the petitioner in Civil Writ No.342 of 2013 while referring to the Bye-laws of 2010 submits that these Bye-laws are framed under Section 340 of the Rajasthan Municipalities Act 2009 and therefore these Bye-laws are to be pressed into service in furtherance of aims and objects and not to thwart a genuine application for registration of Vatika. Reiterating his arguments, which were advanced while defending Civil Writ Petition No.2573 of 2013, Mr. Singhvi would contend that denial of registration by Municipal Council was improper and the orders impugned Annex.16, 18 & 20 are also dehors the Bye-laws of 2010, therefore, cannot be sustained. Mr. Singhvi submits that the premise on which resolution was adopted by the Municipal Council is absolutely false, inasmuch as, there is no restraint order against Mr. Taya in connection with operating Vatika and precisely the grounds set out in the rejection order for registration of Vatika are also same which are not at all relevant and germane to the matter. Mr. Singhvi submits that rejection of the application is based wholly on nonest

grounds and the revisional authority while considering the order of rejection has unnecessarily put certain riders for registration of Vatika, which are contrary to the provisions of the Bye-laws of 2010. Mr. Singhvi submits that the revisional authority has virtually created a situation of high and dry for Mr. Taya and has compelled him to approach from pillar to post for vindication of his legal rights which emanates from agreement to sale and his long possession on the land in question. Mr. Singhvi has also contended that after passing of the order dated 13th February 2013, reliefs have been granted to Mr. Taya, therefore, his petition has gone infructuous but for the indulgence granted by the Court in passing the interim order staying the same. On interim order, learned counsel would contend that interim order cannot decide rights of the parties and are not binding precedents. Mr. Singhvi submits that after granting of relief of registration to Mr. Taya, now the questions left are only academic which require no adjudication. In support of his contentions, Mr. Singhvi has placed reliance on a decision of Supreme Court in Shipping Corporation of India Ltd. v. Machado Brothers, AIR 2004 SC 2093.

On the issue of nature and effect of interlocutory order, Mr. Singhvi has placed reliance on following legal precedents:

- State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694.
- Grindlays Bank Limited v. Income tax Officer, Calcutta, AIR 1980 SC 656.
- State of M.P. v. M.V. Vyavsaya & Co., (1997) 1 SCC 156.
- Smt. Shakuntala v. Union of India (UOI) and Ors., 2002 (4) WLC (Raj.) 41
- Gomti Devi and Anr. v. Ashok Bhandari and Anr., 2006 (3) RLW 2401.

With these submissions, Mr. Singhvi has urged that Writ Petition No.342 of 2013 has rendered infructuous and the same may be decided as infructuous while undoing the effect of the interim order so that it may not adversely affect rights and interest of Mr. Taya. Mr. Singhvi has submitted that no suit against Mr. Taya is pending in relation to his title on the land in question and the proceedings launched by intervener Mr. Vivek Vyas are motivated and in fact he is a proxy litigant on behalf of one Mr. Gattani, in whose favour Vatika registration has been granted by Municipal Council, Udaipur, wherein fact situation is identical to Mr. Taya.

Mr. Anurag Shukla, learned counsel for respondent Municipal Council has not made any endeavor to dilate on the contentious issues and has simply reiterated his stand which he has urged while arguing Civil Writ Petition No.2573 of 2013.

Mr. Punia, learned Senior Counsel for intervener University, while reiterating his submissions which were canvassed in Civil Writ Petition No.2573 of 2013, submits that order dated 28<sup>th</sup> January 2013 is crystal clear wherein the Commissioner, Municipal Council was directed to pass appropriate speaking order and in compliance thereof he has sent the matter to Director, Local Bodies on 4<sup>th</sup> February 2013, which makes is amply clear that Commissioner was reluctant to pass any order. While laying emphasis on communication dated 4th February 2013 of the Municipal Commissioner, Mr. Punia submits that order dated 13th February

2013 is ad-verbatim to the earlier communication of the Commissioner dated 4th February 2013, which is sufficient to conclude that the same has been passed mechanically without application of mind.

Castigating the order dated 13<sup>th</sup> February 2013, learned counsel for Intervener-University submits that from the tenor of order it is clearly apparent that the competent authority has passed the said order by simply changing the operative portion as if it was directed to decide the matter favouring the cause of Mr. Taya. Mr. Punia has also urged that the remand order speaks volumes about the fact that direction was issued to the Municipal Council and not to the Commissioner and therefore this order has been rightly stayed by this Court and the stay order is further affirmed by the Division Bench by declining to interfere with the same. Mr. Punia has also questioned the title of Taya by referring to Bye-laws 4 & 6 of the Bye-laws of 2010 wherein it is clearly postulated that an incumbent is required to submit documents about the title. Learned counsel Mr. Punia has also taken a dig at the order dated 13th February 2013 by submitting that the same has been passed in a slip shod manner contrary to mandate of Bye-laws of 2010. Referring to certain documents submitted by the other intervener Mr. Vivek Vyas, Mr. Punia would contend that on the face of it there is a serious dispute about title of Mr. Taya, which is pre-requisite for grant of registration, therefore, no interference with the impugned order in the instant writ petition is called for. Mr. Punia has also referred to a suit filed by other intervener Mr. Vivek Vyas and urged that there is a serious acrimony between Mr. Taya and his family members and



the same can be examined by the competent authority pursuant to the remand order of the Director, Local Bodies.

Mr. Vivek Vyas, intervener, appearing in person, has also adopted the arguments of learned counsel Mr. Punia and argued that there is serious dispute about title of Mr. Taya on the land in question which is required to be examined by competent authority pursuant to the remand order.

Mr. Shree Ram Choudhary for intervener, has also adopted the arguments of Mr. Punia while stoutly defending the remand order passed by the Director, Local Bodies.

I have heard learned counsel for the parties in both the petitions, perused the materials available on record and bestowed by anxious consideration to the rival submissions.

Explicating the lis involved in these two petitions with bird's eye view, makes it crystal clear that the parties at logger heads are pursuing their respective cause with their interpretation about the provisions of the Bye-laws of 2010. It is quite obvious that rival parties are construing these provisions to their advantage in achieving cherished mission. Therefore, with a view to examine and analyze the provisions of the Bye-laws of 2010, it is imperative for this Court to scan the relevant provisions governing the province of registration of Vatika. Bye-law 2 of the Bye-laws of 2010 is a definition clause, wherein terms "authorized officer" and "Vatika" are defined. Bye-law 4 prescribes requirement in submission of

application for registration of Vatika. Bye-law 5 deals with the procedure to be followed for according registration, and Bye-law 6 deals with the enquiry to be made about title of land/building. Bye-law 6 envisages the provision for appeal and under Bye-law 8 time period is prescribed for deciding the application for registration of Vatika. For ready reference, Bye-law 2(vi) & (vii) as well as Bye-laws 3 to 8 are reproduced as under:

**2- 'kkfCnd ifjHkk"kk,a%&**

¼vi½ vf/kd`r izkf/kdkjh ls rkRi;Z LFkkuh; fudk; 'kh"kZLFk] iz`kklfud vf/kdkjh }kjk fu/kkZfjr fd;s x;s izkf/kd`r vf/kdkjh ls gS tks jktLo vf/kdkjh ls dfu"B Lrj dk ugha gksxk vf/kd`r izkf/kdkjh }kjk mifof/k;ksa ds vUrxZr fookg LFky dh vuqefr ,oa lapkyu dh fdz;kfUor lqfuf`pr dh tkosxhA

¼vii½ fookg LFky ls rkRi;Z uxj fuxe@uxjifj"kn~@uxjikfydk@dh lhek esa fLFkr ,sls leLr Hkw[k.Mksa@QkeksaZ@lkeqnf;d dsUnzksa@Hkouksa@ Dycksa@cSDoV gkWY bR;kfn ls gS tks lxxbZ@'kknh@tUe fnol ,oa vU; izdkj ds lkekftd lekjksg@mRlo@izn`kZuh@dUos`ku@xjck mRlo@ uo o"kZ vk;kstuk bR;kfn iz;kstukFkZ mi;ksx ds fy;s tkrs gSaA

**3- fu"ks/k%&**

LFkkuh; fudk; dh lhek esa dksbZ Hkh O;fDr] laLFkkfud dEiuh LFkkuh; fudk; dh vuqefr izkflr fd;s feuk ,sls LFkku dk fookg LFky vFkok vU; iz;kstukFkZ mi;ksx ugha dj ldsxkA orZeku esa LFkkfir fookg LFkyksa ds laca/k esa fnukad 31-3-2010 ls iwoZ fu/kkZfjr izfdz;k viuk dj vuqefr izkIr djuh gksxh vU;Fkk voS/k ekudj dk;Zokgh dh tk;sxhA

**4- vuqefr i= izkflr dh iz.kkyh %&**

dksbZ Hkh O;fDr] laLFkk] dEiuh tks LFkkuh; fudk; lhek esa fLFkr Hkw[k.M@Hkou@QkeZ&gkml dk mi;ksx fookg LFky@vU; iz;kstukFkZ djuk pkgrrk gS vFkok bu mifof/k;ksa ds iwoZ LFky dk mi;ksx mijksDr iz;kstukFkZ fd;k tk jgk gS rks mls %&

¼i½ fu/kkZfjr izi= ^d^ esa vkosnu djuk gksxkA

¼ii½ fookg LFky dk dEI;wVjkbZTM ys&vkmV Iyku layXu djuk gksxk rFkk mlDs lkFk fuEu fooj.k nsuk vfuok;Z gksxk%&

¼d½ efgyk ,oa iq:"k ds fy, Hkou fofu;eksa esa fu/kkZfjr ekin.Mksa ds vuqlkj i;kZIr 'kkSpky; o ew=ky;A

¼k½ Hkou fofu;eksa esa fu/kkZfjr vfXu 'keu ;a=ksa dh i;kZIr O;oLFkkA

¼x½ vkosfnr LFky dh dqy O;fDr;ksa dh lekfgR djuS dh {kerkA  
¼?k½ vkus o tkus ds nks jkLrs ¼lqj{kk dh n`f"V ls vfuok;Z½ vxj orZeku esa vkosfnr LFky ij vkus tkus dk ,d gh jkLrk miyC/k gS rks vkosnudsZ dks vkosnu djuS ls iwoZ nwljk jkLrk dh O;oLFkk dh tkdj gh vkosnu fd;k tk ldsxkA

¼M½ uxj fuxe@uxjifj"kn~ {ks= esa lM+d dh pkSM+kbZ U;wure

60 fQV gksuk vfuok;Z gksxk rFkk vU; uxjikfydk {ks= esa IM+d dh U;wure pkSM+kbZ 30 fQV gksxhA ijUrq 1000 oxZxt ls de {ks= okys eSfjt gkWy ds lanHkZ esa lEcfU/kr uxjikfydk jksM+ pkSM+kbZ gsrq NwV iznku dj ldsxhA lkoZtfud lkeqnf;d dsUnzksa ds lEcu/k esa leLr uxj fuxe@ uxjifj"kn~@uxjikfydk {ks=ksa esa IM+d dh pkSM+kbZ 30 fQV jgsxhA

uxjifj"kn~ mn;iqj lhek {ks= esa%&  
2000 oxZxt rd dh okfVdk dh IM+d pkSM+kbZ 30 QhV  
2000 oxZxt ls mij rd dh okfVdkvksa dh IM+d pkSM+kbZ 40 QhV  
gksuk vko';d gSA

¼p½ dpjk laxzg dh O;oLFkk rFkk xUns ikuh ds fu"dklu dh O;oLFkka  
¼N½ fctyh o ikuh dh i;kZIr O;oLFkk rFkk bejtsUlh ykbZVA  
¼t½ okVj gkjiosLVax  
¼>½ gyokbZ@dSVfjax@vfXu LFkku tgka Hkkstu rS;kj djus dh O;oLFkk dh tkuh gS vkosfnr LFky ij fodflr o`{kkjksi.k ikdZ] yS.MLdsfiak bR;kfn dk fooj.k izLrkfor vkosnu LFky ij fy;s x;s folqr dusD'ku Hkkj dk fooj.k e; vfrfjDr tujsVj :e O;oLFkk] vkfr'kekth ds fy;s iz;qDr fd;s tkus okys LFkku dk baxfrdj.k bR;kfnA  
¼V½ ikfdZax O;oLFkk@;krk;kr foHkkx dk vukifRr izek.k&i=A

¼iii½ lacaf/kr Hkw[k.M ds LokfeRo ls lacaf/kr nLrkost dh izfrA  
¼iv½ ;fn mi;ksxdrkZ fdjk;snkj gS rks mls LFky ds ekfyd ls fyf[kr esa gq, bdjkjkek ,oa ,e-vks-;w-@vU; dkuwuh nLrkost] ftds rgr fu/kkZfjr LFky dk mi;ksx fd;k tk jgk gS dh uksVs;kbZTM izfrfyfi layXu djuh gksxh ,oa fookg LFky dh vf/klwpuk ¼Hkw[k.M@Hkou ekfyd dh lgefr lgr½ ds vUrxZr fu/kkZfjr 'krksaZ dk mlds }kjk v{kj'k% ikyuk fd;k tkosxk] bl gsrq 10@& dk T;wfMf'k;y LVkEi isij ij 'kiFk&i= izLrqr djuk vfuok;Z gksxkA leLr okafNr vkSipkfjdrk;sa iwjh djus ds i'pkr~ LFkkuh; fudk; ds vf/kd`r izkf/kdkjh vFkok mlds izfrfuf/k }kjk vkosfnr LFky dh tkap dh tkdj vuqefr fn;s tkus vFkok ugha fn;s tkus dk fu.kZ; fy;k tkdj vkosnudsZ dks lwfpr fd;k tk ldsxkA

**ys&vkmV&lyku vuqeksnu ds eqj; tkap fcUnq%&  
5- izfdz;k&**

vf/kd`r izkf/kdkjh }kjk igyh ckj fookg LFky iath;u dh vuqefr nsus ls iwoZ lkoZtfud foKflr jkT; Lrjh; nSfud HkkLdj lepkj i= esa vkosnudsZ ds O;; ij izdkf`kr djok;h tkosxhA 15 fnol esa vkifRr izkIr u gksus ij izkf/kd`r vf/kdkjh }kjk fu/kkZfjr 'krksaZ dks iw.kZ djus ds i'pkr~ fookg LFky ¼ami;ksx o miHkksx½] iath;u tkjh fd;k tk ldsxk A ; fn vkifRr izkIr gksrh gS rks vkifRrdrkZ dh lquok;h dh tkdj izdj.k dk fuLrkj.k LFkkuh; fudk; ds 'kh"kZLFk iz'kklfud Lrj ds vf/kdkjh }kjk fd;k tk,xkA

**6- Hkwfe@Hkou LokfeRo dh tkap&**

;fn vkosnudsZ }kjk vkosnu i= esa okafNr nLrkost layXu ugha fd;s x;s gks ;k okafNr nLrkost tkap esa lgh ugha ik;s tkos rks mifof/k 4 ds vUrxZr izkIr vkosnu i= dks izkf/kd`r vf/kdkjh }kjk vLohdkj fd;k tk ldsxkA vkosnu i= ds lkFk tek djokbZ xbZ fookg LFky iath;u 'kqYd dh jkf`k dks ykSVk;k ugha tkosxkA vkosnudsZ dks vkosnu i= vLohdkj djus dk dkj.k Li"V djrs gq, fyf[kr esa lwfpr djuk vko';d gksxkA

**7- vihy&**

fookg LFky ds fy, vkosnudsZ ds vkosnu dks fdllh dkj.k vxj vLohdkj dj fn;k tkrk gS rks rks vLohdkj i= tkjh djus ds 30 fnol esa bldh vihy jktLFkku uxjikfydk vf/kfu;e] 2009 dh /kkjk 55 esa xBr lfefr vFkok bl

iz;kstu ls vf/kd`r lfefr esa dh tk ldsxhA

**8- vkosnu Lohd`r@vLohd`r djus dh le; lhek %&**

LFkkuh; fudk; }kjk vkosnu i= izkIr gksus dh 30 fnol dh vof/k esa vkosnudsZ dks Lohd`fr@vLohd`fr ds lEcU/k esa lwfpr fd;k tkuk vfuok;Z gksxkA

A bare reading of the provisions of Bye-laws of 2010 makes it crystal clear that these bye-laws are framed with laudable objects so that public at large may not suffer any inconvenience, nuisance or possible traffic jams on the main roads of the city of Udaipur. Bye-law 3 puts an embargo on running of a Vatika within the limits of local authority without due permission. Therefore, the whole purpose of the Bye-laws of 2010 is to streamline the procedure for grant of registration to Vatikas. The Bye-laws of 2010 provide adequate safeguards to take care about the problems of public at large visiting such Vatikas. In that background, if the afflictions of the litigating parties are analyzed then it will ipso facto reveal that Rajkumar Taya, petitioner of Civil Writ No.342 of 2013 submitted an application for registration of Vatika on 24.09.2010 as per the Bye-laws of 2010 and also submitted documents and fee on 07.02.2012. Upon receipt of the said application, Municipal Council, Udaipur published a notice in daily newspaper "Rajasthan Patrika" dated 10<sup>th</sup> February 2011 inviting objections. Pursuant to the notice published in the newspaper, some objections were submitted and University also submitted objections. It appears that as a consequence of complaint by some individuals, the Collector (Vigilance) decided not to register any marriage place having road width of less than 50 ft, or the area is exceeding 2000 sq.yards. As a consequence of Vigilance Committee's report, the application for registration of

Vatika of Mr. Taya was rejected on 13.07.2012. The aforesaid order was assailed by him before the Chairman of Municipal Council and the matter is remanded back. After remand, some favourable gesture was shown by the Municipal Council and Mr. Taya was asked to deposit the requisite fee. However, there was serious acrimony amongst the Members of the Municipal Council and therefore in the meeting of the General Body dated 10th October 2012 certain objections were raised that there is a restraint order by Court of law for registration of Vatika of the individual. Without verifying the factual aspects, eventually the application for registration of Vatika was rejected on 2<sup>nd</sup> of November 2012. Being aggrieved from that order, Rajkumar Taya preferred an appeal/revision before the State Government under Section 194 read with Section 327 of the Act of 2009 and by order impugned dated 12<sup>th</sup> December 2012, the matter is remanded back to the Municipal Council for decision on his application afresh. While remanding the matter back, the Director, Local Bodies has formulated 7 issues to be determined by the competent authority before registration of Vatika.

Mr. Taya invoked jurisdiction of this Court seeking annulment of the Resolution of the General Body and order whereby his application for registration of Vatika is rejected as well as the order of remand passed by the State Government and sought a direction against the competent authority to decide his application expeditiously in terms of the Bye-laws of 2010.

At the threshold, the Court directed the competent authority to decide the application in accordance with law and in adherence of

that order the Commissioner, Municipal Council, Udaipur has passed an affirmative order according registration of Vatika. The order to this effect is considered by the Court to be prima facie obnoxious and therefore taking suo-moto cognizance the said order was kept in abeyance.

The issuance of the order granting registration of Vatika has prompted the University to launch litigation in the form of Civil Writ No.2573 of 2013 to challenge the said order. It is needless to observe here that University has also made endeavour to be impleaded as party respondent in Writ Petition No.342 of 2013 but this effort of the University proved abortive and the Court has simply permitted it to intervene in the matter without filing pleadings. In backdrop of these developments, the issue relating to locus of the University to challenge the order whereby Vatika was ordered to be registered has acquired great significance and therefore while examining the locus of the University, it is very much desirable to delve deep into the pleadings of the University in Writ Petition No.2573 of 2013. The averments made in the writ petition by the University for assailing the order dated 13th February 2013 are absolutely vague, cryptic and unspecific. The whole thrust of the University for treating it as an aggrieved individual against the order dated 13th February 2013 is the land acquisition proceedings initiated by the State Government for development of the University. Factually, it is not in dispute that these proceedings have been halted after issuance of Notification under Section 4(1) by judicial intervention and the petitions/appeals challenging the acquisition proceedings are still sub-judice before the Division Bench of this

Court in many appeals. Thus, mere acquisition proceedings allegedly in vogue per-se cannot furnish any cause of action to the University to maintain a petition. That apart, against application of Mr. Rajkumar Taya for registration of his Vatika, University was simply an objector and its right was only confined to put resistance against the endeavour of Mr. Taya for registration of his Vatika. An incumbent, who can be potentially an objector, or a complainant, I am afraid, cannot be categorized as an aggrieved individual to maintain a petition. Reliance in this behalf can be placed on a Division Bench decision of this Court in Surendra Kumar Garg & Ors. (supra), wherein it was held:

6. So far as the ground of locus standi is concerned, it may be mentioned that once the complaint is made, the business of the complainant is over. He is no more person to make any interference as the complaint is the subject-matter of enquiry between the party concerned and the Government and no-one has a right to make an interference. The complainant is only an informer and the business has been completed by the appellants, while making complaint against the respondent No. 3 and they have no interest left in the matter to get acquaintance with the further development of the proceedings. Apart from that, the State Government has always inherent jurisdiction to revoke its earlier order in view of the subsequent events taking place in the matter. In this connection, reference of *Bharat Kumar v. The State of Rajasthan and Ors.*[2000 (2) WLC 270] and *Mahadev Prasad Yadav v. State of Rajasthan and Ors.* [1990 (1) RLR 157: RLW 1990 (1) Raj. 529] may be made.

The same view is further reiterated in case of *Meena Vyas* (supra).

The arguments canvassed by the University to assail the order dated 13th February 2013 for which there is no foundation in the writ petition, requires no judicial scrutiny for the reason that a

litigant cannot be permitted to urge the grounds beyond his pleadings. Moreover, the University has also not made any endeavour to file additional pleadings for substantiating these grounds. In totality, therefore, in my view, no indulgence can be granted to the University in its writ petition No.2573 of 2013 as the same is not maintainable. However, it is made clear that the concern of the University for strict adherence of the provisions of the Bye-laws of 2010 as intervener in Writ Petition No.342/2013 requires due credence for arriving at a just decision.

Now switching on to Civil Writ No.342 of 2013, wherein at the threshold a prayer was made for quashment of Annex.16, 18 & 20 but later on the writ petitioner Taya has submitted that after issuance of the requisite permission for registration of Vatika, the petition has gone infructuous, suffice it to observe that Court feels that still the subject matter of the petition requires judicial scrutiny. Learned counsel for the petitioner, in this petition has vociferously argued that interim orders cannot decide the rights of the parties and are not binding precedents. The legal maximum *actus curiae neminem gravabit*, which means that act of Court shall prejudice no one, is founded upon justice, equity and good conscience, which serves a safe and certain guidance for administration of law. Hon'ble Supreme Court in case of State of M.P. v. M.V. Vyavsaya & Co., [(1997) 1 SCC 156] while construing the true purport of interim orders, held as under:

“Even otherwise, the interim orders passed are always subject to the final orders in the matter. The interim orders can always be corrected or revised at the final stage.”



This Court, in case of Smt. Shakuntala (*supra*), while elaborating the true impact of interim order, held as under:

22. It is settled law that no litigant can derive any benefit because of pendency of case in a Court of law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified, automatically. A party cannot be allowed to take any benefit of its own wrongs by getting interim order and thereafter blame the Court. The fact that the suit is found, ultimately, devoid of any merit, shows that a frivolous suit has been instituted. The legal maxim *Actus Curie neminem gravabit* is applicable in such a case, which means that the act of the Court shall prejudice no one. In such a situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court where the interim order stood merged in the final order. (Vide *Grindleys Bank Ltd. v. Income Tax Commissioner* (AIR 1980 SC 656), *Ram Kishan Verma v. State of U.P.* (AIR 1992 SC 1888); *Dr. A.K. Sircar v. State of Uttar Pradesh and Ors.* (1993 Suppl. (2) 734); *Shiv Shankar and Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation and Anr.* (1995 Suppl. (2) SCC 726); *Kannoriya Chemicals and Industries Ltd. v. U.P. State Electricity Board* (AIR 1994 All. 273); *Ugam Singh v. State of Raj. and Ors.* (1997 (3) RLW 1517); the Committee of Management, *Arya Inter College v. Shree Kumar Tiwari* (AIR 1997 SC 3071); and *G.T.C. Industries Ltd. v. Union of India and Ors.* (1998 (3) SCC 376). Similar view has been reiterated by the Hon'ble Supreme Court in *State of Madhya Pradesh v. M.V. Vaishvaraiya* (1997) 1 SCC 156).

Hon'ble Apex Court in yet another decision in case of *State of Assam* (*supra*), held as under:

21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing *prima facie* findings, are only tentative. Any interim directions issued on the basis of such *prima facie*

findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

22. The observations and directions in *Kapil Hingorani(I) v. State of Bihar*,(2003) 6 SCC 1 : 2004 SCC (L&S) 586 and *Kapil Hingorani(II) v. State of Bihar*, (2005) 2 SCC 262 : 2005 SCC (L&S), being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of *Kapila Hingorani (I)* and *Kapil Hingorani (II)*.

Well it is true that registration of Vatika accorded in favour of Mr. Taya cannot be annulled by an interim order, nor interim order can prejudice the rights of the writ petitioner Taya for getting registration in accordance with law, but conversely it is an admitted fact that the Commissioner, Municipal Council, Udaipur has issued the said order in adherence of the interim order passed by this Court on 28<sup>th</sup> January 2013, quoted supra. If communication of the Commissioner, Municipal Council dated 4<sup>th</sup> February 2014, which is forwarded to Director, Local Bodies, is examined in conjunction with order dated 13<sup>th</sup> February 2013, whereby permission for registration of Vatika is accorded, then it will ipso facto reveal that the language employed therein is para-materia. As a matter of fact, the

competent authority while passing the said order has eschewed its earlier communication dated 4<sup>th</sup> February 2013 addressed to Director, Local Bodies. Moreover, the objections which were submitted by some of the incumbents including the University have not been properly dealt with while passing the said order. Therefore, in my view, the order dated 13<sup>th</sup> February 2013, which is apparently an outcome of an interim order of this Court, has not created any legal right in favour of the writ petitioner to reap fruits flowing from the said order. The operative portion of the order speaks volume about the fact that the decision of the Commissioner, Municipal Council, Udaipur has not been taken objectively while appreciating the factual and legal aspects and probably a decision favouring the cause of Mr. Taya has been taken presumably on the anvil that affirmative decision is mandated by this Court. The operative portion of the order under the caption "fu"d"kZ" reads as under:

fu"d"kZ %&

mijksDr okfVdkvksa ds laca/k esa iwoZ esa ftyk dyDVj egksn; lrdZrk mn;iqj ds funsZ'kkuqlkj ekSds ij 40 fQV dh jksM miyC/k ugh gksus ds dkj.k vk;qDr }kjk mDr okfVdkvks dk iath;u fujLr dj fn;k x;k Fkk ftldh vihy IHkkifr dh v/; {krk esa xfBr lfevr dks dh xbZ FkhA lfevr us lMd ,oa dksyksuh jksM dks n`f"Vxr j[krs gq, iqu% tkap dj dk;Zokgh djus ds funsZ'k fn;s tkus ij if'pe esa 41 fQV dh jksM gksus ls iath;u dh dk;Zokgh izkjEHk dh xbZ Fkh fdUrq blh chp uxj ifj"kn~ cksMZ }kjk mijksDr okfVdkvksa dk iath;u fujLr djus ds fu.kZ; gksus ls vk;qDr }kjk iqu% fujLrh dh dk;Zokgh dh xbZ ftl ij vkosnd }kjk funs'kd LFKkuh; fudk; foHkkx t;iqj esa vihy dh xbZ tgka ls izdj.k dks vk;qDr uxj ifj"kn~ mn;iqj dks fjek.M fd;k x;kA blh e/; iz'kklu 'kgjksa ds lax vfHk;ku izkjEHk gksus ls izdj.k dk fuLrkj.k ugha fd;k tkus ls vkosndksa }kjk ekuuh; mPp U;k;ky; esa pkjtksbZ dh xbZ ftldh tkap fjiksVZ ekuuh; U;k;ky; esa izLqr dh xbZ ,oa vfUre fu.kZ; gsrq funs'kd egksn; dks izfr izsf"kr dh xbZ fdUrq blh e/; fnukad 11-2-2013 dks ifj"kn~ vf/koDrk Jh Hkw"k.k flag pkj.k us voxr dj;k;k fd ekuuh; U;k;ky; }kjk funsZ'k iznku fd;s x;s gSa fd izdj.k dk fuLrkj.k vk;qDr@cksMZ }kjk fnukad 14-02-2013 ls iwoZ fd;k tkos ftl ij fnukad 11-02-2013 dks mDr izdj.k ij cksMZ esa fu.kZ; djus gsrq fuosnu fd;k x;k ftl ij fnukad 12-02-2013 dks IHkkifr egksn;k dh Lohd`fr ds vuqlkj cksMZ cSBd fnukad 19-02-2013 ds fcUnw la[;k 11 esa mDr izdj.k dks fu.kZ;kfKZ j[kk x;k fdUrq ekuuh; U;k;ky; }kjk ikfjr vkWMZj 'khV dh udy IHkkifr egksn;k }kjk voyksdu djus ij vkt

fnukad 13-02-2013 dks ekuuh; IHkkifr egksn;k }kjk funsZ'k iznku fd;s x;s fd ekuuh; jktLFkku mPp U;k;ky; ds vkns'k fnukad 11-02-2013 dh ikyuk esa vius Lrj ij okfVdk iathdj.k ds ckjs esa fu.kZ; dj fnukad 14-02-2013 dks ekuuh; mPp U;k;ky; tks/kiqj esa mifLFkfr n'kkZosA mDr fyf[kr vkns'k nksigj 02%45 ij izkIr gksus ij IHkkifr egksn;k dks fuosnu fd;k x;k fd cksMZ cSBd dk ,stsUMk dy tkjh dj fn;k x;k FkkA ftlds fcUnw la[;k 11 dks fujLr djus ij la'kksf/kr vkns'k tkjh djus ds vkns'k fnykos ,oa bls lkFk gh ekuuh; mPp U;k;ky; ,oa IHkkifr egksn;k ds vkns'k dh ikyuk esa mDr izdj.k esa izLrqr lk {;@mtjnkjh ij fopkj djus ds mijkUr vk;qDr Lrj ij fu.kZ; djus ds funsZ'k gksus ls izdj.k dk fuLrkj.k mijksDrkuqlkj fd;k tkrk gSA

fu.kZ; dh lwpuk ekuuh; U;k;ky; ds funsZ'kkuqlkj vkosndks] IHkkifr egksn;k] uxj ifj"kn~ cksMZ] funs'kd egksn; LFkkuh; fudk; foHkkx jktLFkku t;iqj dks nh tkos ,oa ekuuh; U;k;ky; esa lknj fuosnu fd;k tkos D;ksafd ekuuh; U;k;ky; }kjk funsZ'k iznku fd;s x;s gSa fd ;fn uxj ifj"kn~ fdllh izdkj dk fu.kZ; ysus esa foQy jgrh gS rks vk;qDr Lo;a 14-02-2013 dks ekuuh; U;k;ky; ds le{k mifLFkr gksosA izdj.k esa fdllh Hkh i{kdkj }kjk okfVdk lapkyu ds ckjs esa LFkxu vkns'k izLrqr ugha fd;s tkus ,oa ekuuh; IHkkifr egksn;k }kjk cksMZ cSBd esa fu.kZ; dh etk; vk;qDr Lrj ij ,oa vkt gh fu.kZ; dj dy tks/kiqj mifLFkr gksus ds funsZ'k gksus ls vk;qDr ds ikl bl ifjLFkfr esa ,oa miyC/k lk{;ksa ds vk/kkj ij vU; dksbZ fodYi ugh gksus ls mijksDr izdj.k dk mijksDrkuqlkj fuLrkj.k fd;k tkrk gSA

jktLo vf/kdkjh ¼izkf/kd`r vf/kdkjh½ uxj ifj"kn~] mn;iqj dks funsZf'kr fd;k tkrk gS fd mDr izdj.k esa ewy i=koyh funsZ'kky; t;iqj izsf"kr dj j[kh gS ftls rqjUr fo'ks"k okgd ls eaxok dj mijksDrkuqlkj vuqKki= tkjh djus dh dk;Zokgh lqfuf'pr dh tkosA  
fnukad %& 13-02-2013  
LFkku & mn;iqjA

vk;qDr  
¼IR;ukjk;.k vkpk;Z½  
uxj ifj"kn~] mn;iqj

Appreciating the sequence of events and tenor of order dated 13<sup>th</sup> of February 2013, the Court took suo moto cognizance of the infirmity in the order and stayed the same by detailed order dated 26<sup>th</sup> February 2013. Aggrieved of the said order, effort made by the writ petitioner has also proved abortive inasmuch as Division Bench has also declined to interfere with the interim order while making observations quoted supra. The Division Bench has concluded in clear and unequivocal term that a writ Court in appropriate case can pass order for doing substantial justice. The legal position is no more res-integra that extraordinary jurisdiction of this Court is not

as wide as that of appeal but once the Court is satisfied of injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice. Reliance in this behalf can be profitably made to a decision of Hon'ble Apex Court in case of Shangrila Food Products Ltd. & Anr. Vs. Life Insurance Corporation of India & Anr., (1996) 5 SCC 54. In this verdict, while examining the powers of High Court under Article 226, the Court held:

"It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief".

There is yet another facet of the case which has substantially diluted the rigor of order dated 13.02.2013. In this background, the stand of Municipal Council, Udaipur in reply to Civil Writ No.342/2013 is altogether topsy-turvy during the course of arguments inasmuch as its stand is drastically inconsistent with the pleadings. The apparent inconsistency in the stand of Municipal Council, Udaipur after issuance of order dated 13.02.2013 has also rendered the said order all the more vulnerable.

Justice means in its common acceptation the rendering of every man his due; the constant and perpetual desire to render to

everyone his due; the dictate of right according to the consent of mankind generally, or of that portion of mankind who may be associated in one Government, or who may be governed by the same principles and morals. In judicial sense, justice is nothing more or less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity or in opposition to law. The legal maxim *Justitia est constans et perpetua voluntas just suum cuique tribuendi*, means justice is steady and unceasing disposition to render to every person his due.

Thus, I feel persuaded that by staying order dated 13th February 2013, the Court has acted for doing substantial justice between the parties and its subsequent approval by the Division Bench has made me to believe that said order is liable to be set at naught to promote honesty and fair play. In that background, sans technicality, that the Court has not entertained the writ petition of the University against the order dated 13<sup>th</sup> February 2013, which is passed in the interregnum during the pendency of Civil Writ No.342/2013 pursuant to interim direction of the Court, taking into account the entire factual scenario, the order dated 13th February 2013 is hereby annulled.

Upon thorough evaluation of the afflictions of the petitioner on merits, it clearly emerge out that the writ petitioner Taya is thriving hard for seeking registration of Vatika and he has made all endeavour to satisfy the competent authority. Undisputedly, at the threshold, his application was thrown away on a nonest ground that there is interim stay order operating and subsequently on account of

some factual error about width of the road facing Vatika, his prayer was declined. The competent authority, while rejecting his application was obviously not guided by the facts and circumstances which were relevant and germane to the matter, rather, it has made an order to the detriment of the petitioner while relying on certain facts and circumstances, which were wholly irrelevant and extraneous to the matter. In that backdrop, on his appeal/revision, the State Government thought it proper to remand the matter back for decision afresh while issuing certain guidelines. A detailed examination of the impugned order passed by the State Government while remanding the matter back in the background of facts and circumstances of the instant case, wherein the interveners viz., University and Mr. Vivek Vyas in unison raised the question about title of the petitioner with some other issues, it has become imperative for this Court to maintain a judicial restraint by not interfering with the remand order Annex.20 passed by the Director, Local Bodies. It is trite that certiorari jurisdiction is to be exercised with great care and circumspection and prerequisite for exercising such jurisdiction is existence of an error apparent on the face of record in the impugned order or the authority subordinate has committed any jurisdictional error. None of these infirmities are ex-facie traceable from the impugned order warranting interference. Writ of certiorari is a discretionary remedy and therefore cannot be claimed as a matter of right. In the instant case, the impugned remand order has not caused any prejudice to the writ petitioner Mr. Taya so as to exercise this discretion in his favour.

A glance at the order clearly and unequivocally reveals that

guidelines issued by the Director, Local Bodies to the competent authority for deciding the application of Mr. Taya afresh is in consonance and conformity with the Bye-laws of 2010. Bye-law 5 of the Bye-laws of 2010 mandates a general notice inviting objections before according registration of a Vatika. It further postulates that competent authority is obliged to decide the objections after affording opportunity of being heard to the objector. Therefore, I am not persuaded to interfere with the impugned order Annex.20 passed by the Director, Local Bodies in limited scope of judicial review under Article 226 of the Constitution of India.

The upshot of the above discussion is that the Writ Petition filed by the University (Civil Writ No.2573/2013) is dismissed as not maintainable and the writ petition filed by Mr. Taya (Civil Writ No.342/2013) is also dismissed with the observations made hereinabove. In the peculiar facts and circumstances of the case, Commissioner, Municipal Council, Udaipur is directed to decide the application of Mr. Taya for registration of Vatika strictly in accordance with law while adhering to the guidelines issued by Director, Local Bodies, as expeditiously as possible, preferably within a period of one month from the date of production of certified copy of this order. It is needless to observe that Commissioner, Municipal Council, Udaipur shall decide the matter dispassionately uninfluenced by the interim order passed by this Court and it shall take into account the facts and circumstances which are relevant and germane to the matter while scrupulously avoiding consideration of the facts and circumstances which are wholly irrelevant and extraneous. The Commissioner, Municipal Council



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shall also consider the objections of the interveners and shall decide the same in accordance with law.

Costs are made easy.

**(P.K. LOHRA), J.**

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