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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6947/2020

IN THE MATTER OF :

NIDA REHMAN & ANR.

... PETITIONERS

VERSUS

STATE OF NCT & ORS.

... RESPONDENTS

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NEW DELHI

DATED: 18/01/2021

THROUGH

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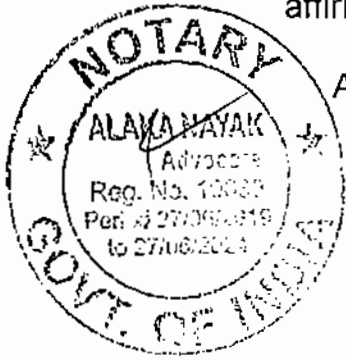
STATE OF NCT & ORS.

... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.3

MOST RESPECTFULLY SHOWETH:

1. I, Vinay Kumar Mishra, S/o Paras Nath Mishra, aged about 47 years, posted as Deputy Legislative Counsel in the Ministry of Law and Justice, Legislative Department, do hereby solemnly state and affirm as under:-



- A. I am the above mentioned person and being well conversant with the facts and circumstances of the case and also being duly authorised to swear the present Affidavit on behalf of Respondent.
- B. I state that I have read and understood the content of the list of dates, writ petition and application and reply thereto is as under.
- C. At the outset, I deny all averments, submissions, contention as well as allegations contained in the present Writ Petition to the

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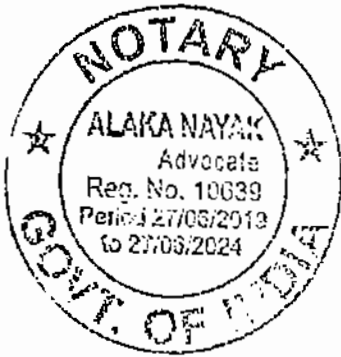
extent they relate to the answering Respondent save and except those that are expressly and specifically admitted hereinafter.

2. That it is submitted that the Petitioner has filed the Writ Petition *inter alia* praying to –

A. Issue *Writ of Certiorari* and or any other Writ, Order exercising powers under Article 226 of the Constitution of India, 1950 to declare Sections 6 and 7 of the Special Marriage Act, 1954(43 of 1954) as null and void and *ultravires* to the constitution of India passed by the Respondent No.3, by holding it as illegal, null, void, *ultravires* and unconstitutional to the Constitution of India, 1950;

B. Issue *Writ of Mandamus* and or any other Writ, Order exercising powers under Article 226 of the Constitution of India, 1950 directing Respondents to decide the objections on the basis of undertaking and certificates issued by govt. Hospital or any other prescribed authority, submitted by the petitioners;

C. Issue an appropriate writ, direction or order for setting aside the impugned procedure of issuances of public notice for 30 days inviting objections to the marriage as for



solemnization & registration of marriages under Special Marriage Act, 1954;

D. Issue an appropriate writ, direction or order against the respondents to direct them to register the marriage of the petitioners with immediate effect;

3. That the Special Marriage Act, 1954 provides a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. Sections 5, 6 and 7 of the Act reads as follows:

"Section 5. Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

Section 6. Marriage Notice Book and publication.— (1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.



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(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

Section 7. Objection to marriage.—(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

4. That with regard to paragraph 1 of the Writ Petition, it is submitted that contents of these paras are matter of facts.



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Caishra

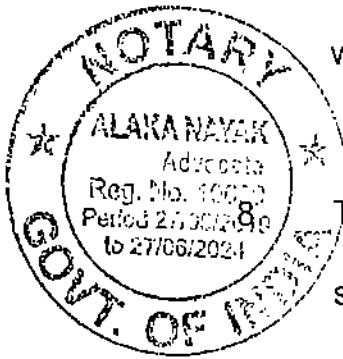
However, it is denied that sections 6 and 7 of the Special Marriage Act, 1954 are ultra vires to the Constitution of India which raise seminal issues of violation of fundamental rights. In this regard it may be mentioned that the intention behind the Special Marriage Act, 1954 is to keep adequate safeguards to the interest of various parties involved. When a person gives notice for solemnisation of his marriage, the marriage officer shall publish the notice at conspicuous place in his office. After the expiration of thirty days from the date of publication of the notice for solemnisation of marriage, the marriage may be solemnised. If any person raises objection to the said marriage within a period of 30 days, the marriage officer shall not solemnise the marriage until he has enquire into the matter of objection. It may not be possible to verify the credibility of such person if at least thirty days period is not given as mentioned in section 7 of the Act. Further, Sections 8 to 14 of the said Act laid down the procedure on receipt of objections and hence, the procedure laid down in this Act for registration of marriage is fair and reasonable. Therefore, the contention of the petitioner is not tenable. The conditions relating to solemnisation of Special Marriage mentioned under Section 4 of the Act is in consonance with the intention behind the Act.



(VINAY KUMAR MISHRA)
 Deputy Legislative Council
 (Signature)
 (Date)

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5. That with regard to paragraph 2 of the Writ Petition, it is submitted that the Petitioner have to substantiate the same.
6. That with regard to paragraphs 3.1 to 3.7 of the Writ Petition, it is submitted that contents of these paras are matter of facts and Answering Respondent has no comments to offer.
7. That with regard to paragraphs 3.8 and 3.9 of the Writ Petition, it is submitted that the Petitioner has mentioned order dated 19.03.2020, passed by this Hon'ble Court in WP(Crl.) No. 760 of 2020 titled as "*Ram Singh Yadav Vs. State & Ors.*" elucidate the plight of the applicants for registration of marriage under Special Marriage Act, 1954. In this regard, it is submitted that the fact and circumstances of the said case was totally different and it is not applicable in the present case.



That with regard to Grounds A to F of the Writ Petition, it is submitted that the reply given by the answering respondent in paragraph 4 may be read as part and parcel to the paragraph under reply, since the same is not repeated herewith for the sake of brevity.

9. That with regard to Grounds G to I of the Writ Petition, it is submitted that the Petitioner has cited cases decided by the Hon'ble Supreme Court in *K.S. Puttuswami and other versus Union of India*, *Govind V. State of MP* (1975(2) SCC 148,

R.Rajagopal V. State of T.N. (1994) 6 SCC 632, District Registrar and Collector V. Canara Bank (2005) 1 SCC 496, Pranav Kumar Mishra and Anr v. Govt of NCT and anr of Delhi decided by Delhi High Court, Kuldeep Singh Meena V. State of Rajasthan through Chief Secretary and ors DB CW.no.17080/2017 decided by Rajasthan High Court in support of his contention and stated that the Hon'ble Supreme Court and Delhi High Court and Rajasthan High Court has observed that right of privacy is a Fundamental Right. It is further stated that, the cases cited by the Petitioner are totally based on the different facts and circumstances and are not applicable to the present case. Though right of privacy is now part of fundamental right but it is not absolute right as the Constitutional bench of Hon'ble Supreme Court in the case of *Justice K.S. Puttaswamy and Ors. Vs Union of India and Ors.*, reported in 2017 (6) MLJ 267, has observed as under:-



".... 35) In view of foregoing discussion, my answer to question No. 2 is that right to privacy is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions, which the State is entitled to impose on the basis of social, moral and compelling public interest in accordance with law."

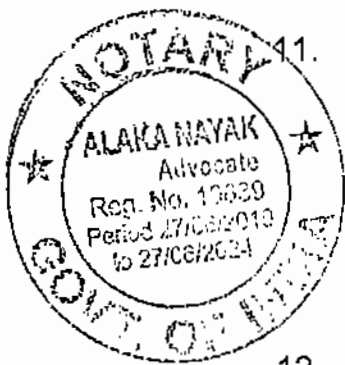
The Apex Court in *Easland Combines, Coimbatore v. Collector of Central Excise, Coimbatore*, AIR 2003 SC 843, has held that:

"18.It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether

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injurious or otherwise, by giving effect to the language used nor it is the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, they should presume that the provision was designed to effectuate a particular object or to meet a particular requirement."

10. That with regard to Grounds J to R of the Writ Petition, it is submitted that the reply given by the answering respondent in paragraph 4 may be read as part and parcel to the paragraph under reply, since the same is not repeated herewith for the sake of brevity.



11. That with regard to paragraphs 4 to 6 of the Writ Petition, it is submitted that contents of these paras are matter of facts and answering Respondent has no comments to offer.

12. That beside this, so far as contention of the Petitioner with regard to issuance of public notice for 30 days for registration of marriage is not tenable. In this regard, Hon'ble Kerala High Court in Deepak Krishna and anr. vs District Registrar And Ors. 2007 (3) KLT 570, has observed as under :-

"18. Section 16 has stipulated a time frame for the public to respond, so as to fulfill certain statutory requirements, then the

designation of time is a limitation or check on the public authority. Purpose of granting specified time of 30 days in Section 15 is to ascertain whether the parties have complied with the conditions laid down in Section 15 of the Act. If the conditions mentioned therein especially (a) to (e) of Section 15 are not fulfilled, the registration of marriage under the Act and the deemed solemnization of marriage under Section 18 of the Act will have no legal effect as per Section 24(2) of the Act. Consequence of non-compliance under Sections 15, 16, Rules 6 and 7 is provided in the Act itself. In our view the time clause of thirty days prescribed under Section 16 is a matter of substance, non-observation of which will result in the object of the provision being frustrated. Nature of the acts to be performed and the phraseology of the statute indicate an intention on the part of legislature to exact a literal compliance with the time stipulated, Contrary view, would operate unfairly in prejudicing the rights of persons who pro pose to file objections on the basis of the public notice within the statutorily stipulated time. We are therefore, of the considered view that the time frame of 30 days prescribed under Section 16 is a mandatory clause, which is not liable to be waived."

13. That it is submitted that In view of the above settled position of law, the present Writ Petition is not maintainable and is liable to be dismissed.

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