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2026 INSC 621

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. .....OF 2026
(@ Special Leave Petition (Civil) No. 25053 OF 2025)

SHEPHALI CHAKRABORTY …APPELLANT(S)

VERSUS

THE STATE OF WEST BENGAL …RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. The appellant - Shephali Chakraborty, as the mother of Master Basab Chakraborty[1], sought permission from the concerned Court[2], in compliance with Section 8 of the Hindu Minority and

[1] Minor
[2] District Judge, Darjeeling

Guardianship Act, 1959[3] to dispose of the latter's share which he had inherited at the death of her husband/his father Late Mr. Basudeb Chakraborty. Such application[4] was rejected[5], and affirmed by the High Court[6]. Thus aggrieved, she has presented this appeal.

3. By way of background the above stated position, it may be recorded that the land in question, a part of which is owned by the minor, was originally procured by his paternal great-grandfather, one Nagendra Nath Das in 1957. Initially, 1/7th of the said property devolved upon Bela Chakraborty, his daughter and the Minor's grandmother in the year 1965. Subsequent to her passing away, in 1978, her share was divided between her three children- two sons, namely, Biplab and Basudeb Chakraborty and daughter, Beauty Sarkar. The appellant is the wife of the second son, who died on 25th January 2018, when the minor was approximately nine years old, having been born on 4th March 2009. In the year 2022, the heirs in interest of this family, decided that the property be given to a developer, which would get them money and also flats within the development, in exchange. An agreement was entered into, with M/s

[3] HMGA
[4] Misc Judicial Act VIII Case No. 20 of 2022
[5] In terms of Order Dated 1st July 2023
[6] In terms of Order Dated 2nd August 2024 in FMAT No 26/2023

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Shivam Estates and Developers. The portion of the agreement [7], in so far as it relates to the present appellant and the minor are as below:

> "AND WHEREAS one being No. (6) co-owner Bela Chakraborty, Wife of Late Bibhuti Bhusan Chakraborty and Daughter of Late Nagendra Nath Das died intestate on 13.05.1978 leaving behind her the following legal heris to inherit her 1/6th share in the said land measuring 0.13 acres in equal share as per provision of Hindu Succession Act, 1956 :
>
> (1) Sri Biplab Chakraborty – Son
> (2) Sri Basudev Chakraborty – Son
> (3) Smt. Beauty Sarkar – Daughter
>
> AND WHEREAS one of the legal heir of Late Bela Chakraborty being son BASUDEV CHAKRABORTY also died intestate on 25.01.2018 leaving behind him the following legal heirs to inherit his share in the 1/6th share of Late Bela Chakraborty in the said land measuring 0.13 acres in equal share as per provision of Hindu Succession Act, 1956 :
>
> (1) SMT. SHEPHALI CHAKRABORTY – Wife
> (2) MASTER BASAB CHAKRABORTY – Son
>
> …
>
> **ARTICLE - XI**
>
> **MISCELLANEOUS**
>
> 3] The owners will have only the exclusive right to the Flats and portions allotted to them as owner's allocation as mentioned in schedule – 'B' free from all costs and charges.
>
> 4] That in consideration of the right and authority given to the developer by the owners, the developer by

[7] Developer

the owners, the developer will construct flats for the owners as per the specifications contained in Schedule B below. The developer, allocation, shall pay an amount of Rs. 10,00,000/- (Rupees 10 lakhs) only and which will be payable as per details given in the schedule – 'B'.

…

SCHEDULE "B" ABOVE REFERRED TO (OWNER'S ALLOCATION)

At First Floor

i) Frond side flat being No.1A allocated to Sri Adhir Kumar Das being Owner No. (I)
ii) Middle side flat being No. 1B allocated to the legal heirs of Late Bela Chakraborty being owners No. (6) to (9) namely Sri Biplab Chakraborty, Shephali Chakraborty, Basab Chakraborty and Smt. Beauti Sarkar…."

4. In order to act upon the intention to transfer the property to the Developer, or in order to act in pursuance of the Development Agreement, the appellant applied to the concerned Court. The Court, in rejecting the application, stated thus:

"…As per Section 6(5) of Hindu Minority and Guardianship Act the provisions of the Guardians and Wards Act shall apply to an application for obtaining permission from the Court to transfer minor's property in all respects as it were an application for obtaining the permission of the Court under Section 29 of the Guardians and Wards Act. As per Section 31(2) of the Guardians and Wards Act the order granting the permission shall recite the necessity or advantage to the minor for transferring the property.

It is specifically stated in the petition and in evidence affidavit that the development of property is essential for

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> the future of the minor as well as the better utilization of the same. Except such bald statement it is not described why and how it is essential for the future of the minor. It is the petitioner's case that she has no resource to maintain the child including his upbringing, medical treatment and education. It is not revealed whether the minor's father left any other property or assets. It is not elaborated how 1/3rd share in a flat in the proposed building whose identity remains in dark, is essential for the future of the child.
>
> It is not mentioned how the property is utilised at present. When the present utilization is not disclosed, the Court is not in a position to compare it to the proposed future utilization and come to a decision as to whether it is better or not…"

5. On appeal, the Circuit Bench of the High Court at Jalpaiguri, agreed with the findings of the concerned Court and, so affirmed the dismissal of the application.

6. *Ex ante* and *ex post* indicates the point at which State power or judicial scrutiny is exercised. *Ex ante* means an assessment made before the occurrence of an event, based on anticipation of conduct or harm, whereas *ex post* scrutinizes the legality and liability after the relevant act, after the fact. This distinction is essential to constitutional safeguards and statutory remedies along with judicial review.

The former is most evident in preventive mechanisms such as preventive detention and anticipatory bail. Preventive detention under Articles 22(3) to 22(7) of the Constitution authorises

deprivation of personal liberty not as punishment for past conduct but to prevent anticipated acts prejudicial to public order or national security. Recognising the exceptional nature of such power, the Court in ***Maneka Gandhi v. Union of India***[8], held that even preventive procedures must satisfy the test of fairness, reasonableness, and non-arbitrariness under Articles 14 and 21.

Similarly, anticipatory bail under Section 438 CrPC constitutes an *ex ante* judicial remedy, invoked prior to arrest. In ***Gurbaksh Singh Sibbia v. State of Punjab***[9], the Court clarified that anticipatory bail rests on a predictive assessment of the likelihood of misuse of arrest powers and is not dependent on a determination of guilt. The Court held that such relief is inherently forward-looking and discretionary, unlike *ex post* adjudication in a criminal trial.

On the other hand, *ex post* reasoning forms basis on which the determination of criminal liability and punishment stands. Article 20(1) of the Constitution prohibits retrospective criminalisation and enhanced punishment, thereby mandating that guilt and penalty be determined after the fact and as per the law of the time. In ***Rao Shiv Bahadur Singh v. State of Vindhya Pradesh***[10], the Court held that

[8] (1978) 1 SCC 248
[9] (1980) 2 SCC 565
[10] AIR 1953 SC 394

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Article 20(1) embodies a fundamental principle of criminal jurisprudence, reinforcing the idea that penal consequences must follow proven past conduct and not anticipatory assumptions.

The legal system employs both *ex ante* and *ex post* mechanisms in Licensing regimes. Prior approvals, and regulatory compliance requirements function as *ex ante* controls aimed at preventing foreseeable harm, particularly in sensitive domains such as the liberty of an individual once administrative action is taken, Courts exercise *ex post* judicial review to examine legality, procedural fairness, and reasonableness. In ***Tata Cellular v. Union of India***[11], this Court emphasised that judicial review is concerned not with the merits of the decision but with the decision-making process, necessarily making it an exercise *after the fact*.

Another illustrative application of the *ex ante/ex post* distinction arises in family law. Grounds such as cruelty, adultery, and desertion under Section 13 of the Hindu Marriage Act, 1955 are adjudicated *ex post*, based on evidence of past conduct and its cumulative impact on the marital relationship. In ***Samar Ghosh v. Jaya Ghosh***[12], the Court underscored that cruelty must be assessed in light of the totality of circumstances and the effect of prior conduct, reaffirming the retrospective nature of matrimonial

[11] (1994) 6 SCC 651
[12] (2007) 4 SCC 511

adjudication. In contrast, maintenance proceedings under Section 125 CrPC operate in an *ex ante* manner, as a social-welfare measure intended to prevent destitution and vagrancy. In ***Bhuwan Mohan Singh v. Meena***[13], the Court observed that Section 125 CrPC is designed to secure immediate subsistence and dignity for a dependent spouse, enabling early judicial intervention even before final resolution of matrimonial disputes.

7. Having appreciated the distinction between *ex post* and *ex ante*, we delve into Section 8 of the HMGA, which is an example of the latter. It governs the powers, limitations and consequences of a guardian's actions in respect of a minor's property. It reads:

> "**8. Powers of natural guardian**.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.
>
> (2) The natural guardian shall not, without the previous permission of the court,— (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.
>
> (3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-

[13] (2015) 6 SCC 353

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> section (2), is voidable at the instance of the minor or any person claiming under him.
>
> (4) No court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in case of necessity or for an evident advantage to the minor.
>
> (5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular— (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof; (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the Acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.
>
> (6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate."

It is divided into four substantive parts-Part I– General powers of a natural guardian; Part II – Restrictions on alienation of immovable property; Part III – Legal effect of unauthorized alienation; and Part

IV– Standard to be applied by the Courts in adjudicating the application.

Under sub-section (1), a natural guardian is permitted to perform all acts that are necessary or reasonable for the benefit of the minor or for the protection and proper management of the minor's estate. This power is framed in broad terms, recognising that day-to-day management often requires flexibility. However, the statute is careful to make this authority expressly subject to the restrictions contained in sub-section (2), thereby making it clear that managerial powers do not extend to unfettered rights of disposition.

Sub-section (2) draws a clear line when it comes to dealings with immovable property. It prohibits a natural guardian from selling, gifting, exchanging, mortgaging, or otherwise encumbering a minor's immovable property without first obtaining the permission of the Court. The same restriction applies to leases that are long-term in nature, namely those exceeding five years or extending beyond one year after the minor attains majority. The requirement of prior judicial approval reflects legislative caution against transactions that could permanently affect the minor's proprietary rights.

The consequences of violating these restrictions are addressed in sub-section (3). A transaction entered into by the guardian

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without the requisite Court permission is not *void ab initio*, but voidable at the instance of the minor or any person claiming through the minor. This distinction is significant. It preserves the minor's right, upon attaining majority, to either affirm the transaction or seek its avoidance, depending on whether it ultimately serves their interests.

Sub-section (4) guides the Court in deciding whether permission should be granted in the first place. The Court must be satisfied that the proposed transaction is either necessary or demonstrably for the benefit of the minor. Courts have consistently[14] applied this standard with a degree of strictness, placing the burden squarely on the guardian to justify the transaction. Considerations of family's convenience or the guardian's personal obligations are, in our view, insufficient unless they can be shown to translate into a tangible advantage for the minor.

Section 8, therefore, embodies the principle that a natural guardian holds the minor's property in a fiduciary capacity. The provision seeks to balance potentially competing interests, i.e., allowing practical management of the minor's estate and subjecting,

[14] Saroj v. Sunder Singh, (2013) 15 SCC 727; Rani v. Santa Bala Debnath, (1970) 3 SCC 722

what may be, irreversible decisions to judicial scrutiny, thereby ensuring that the welfare of the minor remains paramount.

8. Principles as can be deduced from various judgments of this Court are:

> 1. Section 8 imposes a statutory restraint on the powers of a natural guardian in respect of a minor's immovable property and requires prior permission of the concerned Court for alienation as a protective measure. [***Vishwambhar & Ors. v. Laxminarayan***[15]]
>
> 2. An alienation of a minor's immovable property made without the permission contemplated under Section 8(2) is not *void ab initio* but voidable at the instance of the minor or any person claiming through the minor. [***Vishwambhar & Ors. v.*** (supra)**]**
>
> 3. The right to avoid unauthorized alienation accrues to the minor upon attaining majority and must be exercised within the period of limitation prescribed by law. [***Nangali Amma Bhavani Amma v. Gopalkrishnan Nair***[16]]
>
> 4. Avoidance under Section 8(3) need not necessarily be effected through a formal declaratory suit and may be

[15] (2001) 6 SCC 163
[16] (2004) 8 SCC 785

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manifested through clear and unequivocal conduct inconsistent with the continued validity of the transaction, provided such conduct occurs within limitation. [***K. S. Shivappa v. Smt. K. Neelamma***[17]]

5. Reliefs such as recovery of possession or assertion of exclusive title are contingent upon the prior avoidance of the impugned alienation, and so long as the transaction remains unavoided, it continues to bind the minor's interest. [***Murugan & Ors. v. Kesava Gounder (Dead) through LRs***[18]]

6. Section 8 governs alienation of a minor's separate or self-acquired property and does not apply to alienation of undivided joint family property effected in accordance with traditional principles of Hindu law. [***Sri Narayan Bal & Ors. v. Sridhar Sutar & Ors***[19].]

7. The requirement of prior permission under Section 8 is rooted in the welfare of the minor and must be applied purposively, with reference to whether the transaction is necessary or demonstrably beneficial to the minor.

[17] 2025 INSC 1195
[18] (2019) 20 SCC 633
[19] (1996) 8 SCC 54

[See generally, ***G. Annamalai Pillai v. District Revenue Officer & Ors***.[20],]

8. By rendering unauthorized alienations voidable rather than void, Section 8 balances the protection of a minor's proprietary interests with the need to preserve certainty and stability in property transactions. [See generally, ***Vishwambhar & Ors.*** *(supra)*]

9. The requirement of judicial oversight when it comes to the protection of the interests of a minor, is an example of the doctrine of *parens patriae* as embedded with Section 8. Before going further, a brief detour to the origins of this doctrine and its manifestations in the Indian Legal System, would be, in our view, justified.

10. The doctrine of *parens patriae*, translates to "*parent of the nation*," and emanates from the idea that the State bears a moral and legal responsibility toward those who are incapable of safeguarding their own interests. It emerges at the intersection of several strands of political and legal theory that challenge a purely formal conception of autonomy. In the liberal tradition, John Stuart Mill, in *On Liberty*[21] famously articulated the harm

[20] (1993) 2 SCC 402
[21] John Stuart Mill, On Liberty. John W. Parker and Son (1859).

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principle, arguing that State interference with individual liberty is generally unjustified except to prevent harm to others. Crucially, however, Mill expressly excluded children and persons lacking full rational capacity from the scope of this principle, recognising that autonomy presupposes capacity. This implicit exception opens normative space for protective intervention. More recently, Martha Albertson Fineman[22] through works such as *The Autonomy Myth: A Theory of Dependency*[23] and *The Vulnerable Subject*[24], has reframed the debate entirely by arguing that vulnerability is a universal and enduring feature of the human condition, and that the State has an affirmative obligation to design institutions that respond to this vulnerability. Here itself we may take note of the fact that in Indian classical tradition this doctrine was well established. We may only take one example as to what Kautilya has said: *The king shall provide the orphans, (bála), the aged, the infirm, the afflicted, and the helpless with maintenance. He shall also provide subsistence to helpless women when they are carrying and also to the children they give birth to. Elders among the*

[22] Robert W. Woodruff Professor of Law, Emory University School of Law, Georgia, USA
[23] Martha Albertson Fineman The Autonomy Myth: A Theory of Dependency, The New Press (2004)
[24] Martha Albertson Fineman "The Vulnerable Subject," 20 Yale Journal of Law and Feminism 1 (2008)

villagers shall improve the property of bereaved minors till the latter attain their age; so also the property of Gods.[25]

In the pages of history, it is found that this responsibility vested in the English Crown, which was regarded as the ultimate guardian of infants and **persons of unsound mind or mental incapacity**. Eventually, this function came to be in the domain of the Courts where the *modus operandi* was not the usual adversarial method and instead, a continuing and supervisory jurisdiction, informed by considerations of welfare rather than strict legal entitlement. It is this equitable conception of judicial responsibility that travelled into colonial legal systems, including India, and continues to inform modern constitutional and statutory frameworks.

In ***Annie Besant v. G. Narayaniah***[26], it was made clear that in matters concerning minors, Courts do not enforce parental or proprietary rights but act solely to secure the welfare of the child. This reasoning was reinforced decades later in ***McKee v. McKee***[27] where the Privy Council held that a Court exercising jurisdiction over a child cannot abdicate its responsibility by mechanically enforcing foreign custody

[25] Kautilya's Arthashastra, translated by R. Shamasastry
[26] 1914 SCC OnLine PC 40
[27] [1951] 1 All ER 942

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orders. The decisive consideration, irrespective of comity or prior determinations, is the welfare and happiness of the child. These decisions illustrate the core *parens patriae* feature: *the Court's obligation is independent, non-deferential, and welfare-centric*.

Post-independence, this doctrine has acquired constitutional significance. The expansive interpretation of Article 21, read with Article 15(3), are substantive instances of the commitment to protection of dignity, development, and care. The Court's authority to do so is not a creation of statute but emanates from its constitutional role in giving practical meaning to fundamental rights where vulnerability undermines autonomy.

11. Statutorily, the legal regime also has many such examples. The **Guardians and Wards Act, 1890** exemplifies the classical *parens patriae* structure. Section 7 empowers Courts to appoint a guardian only where such appointment is necessary for the welfare of the minor while Section 17 directs the Court to be guided exclusively by welfare considerations rather than claims of right. Importantly, the Act provides for continuous judicial control even upon duly appointed guardians, particularly in matters involving the minor's

property. These provisions firmly establish the idea that guardianship is a Court-supervised responsibility.

A similar logic operates within the **Code of Civil Procedure, 1908,** especially Order XXXII. By prohibiting minors and persons of unsound mind from conducting litigation on their own, and by mandating the courts to appoint guardians *ad litem*, the Code requires active intervention on the part of the Court in furtherance of access to justice and ensuring that litigation does not become a site of exploitation or prejudice.

Modern welfare legislation makes the doctrine even more explicit. We take two examples. The **Juvenile Justice (Care and Protection of Children) Act, 2015** is premised on the understanding that parental authority may fail, and that the State must be prepared to step in as a surrogate caregiver. The powers vested in Child Welfare Committees to remove children from harmful environments, place them in institutional or foster care, and supervise rehabilitation represent a direct exercise of *parens patriae*. The State here does not merely regulate family relations; it assumes responsibility for the child's holistic well-being.

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The **Mental Healthcare Act, 2017** is another such example. The statute balances the autonomy of an individual *vis-à-vis* those circumstances in which informed consent becomes difficult/impossible. In such cases, Mental Health Review Boards, and Courts are authorised to appoint representatives, and take all steps as may be necessary in the interest of the person/patient. This framework exemplifies how *parens patriae* translates into ground reality.

In the **Bharatiya Nagarik Suraksha Sanhita, 2023**, *parens patriae,* can be seen across many Sections. For example, Section 35(7) restricts the arrest of elderly and infirm persons for less serious offences without the prior approval of a senior officer. Custodial safeguards such as Section 46 (no unnecessary restraint), requirements to inform persons of the grounds of arrest and their rights (Sections 47–48), and provisions for the medical examination of the accused (Sections 51–53) ensure dignity and welfare in custody. In addition to this, Section 398 provides for witness protection schemes, reflecting care for witnesses at risk during proceedings.

12. Considering all the above examples, a clear pattern can be discernible. Authority, held privately of whatever nature is

never absolute. '*Welfare*' supersedes all else as the governing standard. Courts and statutory bodies do not merely adjudicate disputes; they assume responsibility. Philosophy, constitutional values, common law tradition, and statutory provisions show that *parens patriae* is not a doctrine of narrow application, but an important tool to protect interests wherever vulnerability displaces agency.

13. Similar to Section 8 HGMA, other jurisdictions also have the requirement of Court approval. For instance, Section 1821 of the German Civil Code[28] enjoins the guardian to seek ratification from the Family Court if they seek to dispose of a plot of land among other things and Section 1822 similarly lists out scenarios in which permission is required. Similarly, Sections 387-1 and 387-3 of the French Civil Code[29] lists out activities which the guardian of the minor cannot do without prior permission of the guardianship judge.

14. In such a case as the present one, at the core of the Court's duty is the responsibility to safeguard the welfare of the minor, a principle that goes beyond consent or convenience.

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[28] Accessible at: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p7021

[29] Original version in the French Accessible at- https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031322948/2026-01-15

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While the approval of a guardian may indicate familial agreement which is well established to be a power of limited nature. In ***Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree***[30], the Privy Council observed: "…*The power of the Manager for an infant heir to charge an estate not his own, is, under the Hindoo law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded…*". It cannot replace the Court's independent assessment of the minor's interests. The Court concerned needs to meticulously examine whether any proposed arrangement could compromise the child's present or future rights, taking into account that the minor cannot fully comprehend or appreciate the consequences of such transactions. The best interest of the child is not passive consideration but a vigorous principle that requires foresight, caution, and meticulous

[30] 1856 SCC OnLine PC 7

scrutiny in every matter affecting the minor's property-'*for an evident advantage to the minor*'.

In assessing the merits of any transaction, the Court must evaluate the likely advantages against the risks. It must determine whether the minor will receive benefits that are secure, measurable and enforceable. At the same time, it must remain vigilant to possible negative effects such as diminution of value, delay in realization of benefits, or exposure to ventures that could prejudice the minor's undivided share. This evaluation of risk and benefit ensures that sanction of any arrangement is on the basis of child's genuine welfare properly balanced against convenience of adult co-owners.

Even where a guardian consents to the arrangement, as in this case, the Court must ensure that adequate safeguards are in place to protect the minor's interests. Such safeguards are not intended to restrict the legitimate rights of adult co-owners but to preserve the minor's stake in the property in a manner.

At the same time, the Court should be aware that not only the child in question but also adult co-owners possess lawful rights to derive reasonable benefit from the property. The presence of a minor should not unduly limit the ability of adults to engage in productive or economically beneficial transactions. The task of the Court is to reconcile these interests

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carefully, enabling everyone including adults to utilize the property in ways that do not undermine or impair the minor's security or future options.

15. In essence, the Court has to, on this factual matrix, examine whether, a portion in land being 0.13 acres in total (5662.8 sq.ft.) is better when weighed from the point of view of '*best interest of child'*-*"to his advantage*" or 1/3rd share in a residential development on the first floor totaling 1198 sq. ft being 399.33 sq. ft. along with Rs.10,00,000/-[31].

16. From the perspective of the minor, an undivided share in undeveloped land often remains a notional interest with little immediate utility. Although it signifies ownership in law, such an interest may yield no benefit for years, may be difficult to realise or monetise, and may be encumbered by disputes or delays, particularly where the property is jointly held. In contrast, the receipt of a constructed residential unit together with a definite monetary consideration transforms into assets that are immediately usable and capable of direct benefit. A house provides a secure form of property that may be occupied, rented, or preserved for future use, while the monetary component offers liquidity that can be applied towards the

[31] See Page 83 of the paper book

minor's education, health, or general advancement. In these facts, it appears that a structured arrangement that results in development and yields specific returns in the form of residences and cash replaces a passive, potentially vulnerable asset, be it to encroachment or otherwise, with property of assured utility and value.

The mixture of illiquid and liquid assets grants a balance to the holder imbued with flexibility which, in certain cases, may collectively be better than owning a part of an undeveloped land. From an equitable standpoint, the conversion of an interest in land into tangible, enforceable assets can be considered a step towards enhancing the minor's welfare. We may note that when the two possibilities of a built-up structure versus an empty piece of land held by several persons jointly is considered in the present facts, it points us to the conclusion that monetary consideration and a portion of a built up structure will be more aligned to the minor's interest. This, however, is no proposition of law and every time the concerned court is confronted with such a situation, the determination of which of the two situations would serve the minor better, has to be made in the facts and circumstances of the case.

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17. In that view of the matter, it is difficult to accept the view of the learned District Judge, Darjeeling, as confirmed by the High Court, to be the correct one. Additionally, we note that there is no merit in the finding of the concerned Court that the identity of the parties who shall hold the other 2/3^{rds} of the proposed flat is in the dark, for the agreement entered into with the developers itself details how the property came to rest with the current owners.

18. With these observations the appeal is allowed. The appellant is hereby granted the necessary permission to realise the Development Agreement. The same shall be, however, subject to certain conditions-

(i) The amount received as part of the development contract shall be kept with a nationalized bank with auto renewal, till the minor attains majority. However, liberty is granted to the guardian to seek modification of such terms from the concerned Court, to be considered on its own merits, depending upon the prevailing circumstances.

(ii) Change, if any, to the Development Agreement, shall not be made without the approval of the concerned Court.

(iii) The co-owners of the flat so received, if desirous of selling their share at a time prior to the minor's attaining majority, shall inform the Court and seek its permission.

(iv) The District Judge, Darjeeling (the concerned Court) may impose other conditions, as it may see fit, and pass a reasoned order therefor.

Pending application(s), if any, shall stand disposed of.

…….J.
(SANJAY KAROL)

……..……..J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi
June 3, 2026