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STATEMENT RE. OWNERSHIP OF LAND BELOW THE SEA WITHIN THE TERRITORIAL WATERS OF THE COUNTRY

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Speaker, Sir, Shri Madhu Limaye, M.P., has raised the question of ownership of Land below the sea within the territorial water of the country and has stated that the Maharashtra Government is encroaching on the rights of the Union of India.

The reference is to the scheme of reclamation formulated and pursued by the Maharashtra Government relating to the reclamation of foreshore. The right of the State Government to the foreshore i.e. the area intervening the high-water mark and lowwater mark is based on sections 294 and 295 of the Maharashtra Land Revenue Code, 1966. The Bombay City Land Revenue Act of 1876 contained almost identical provisions and they have been repealed by the aforesaid legislation in 1966.

The right of the State Government to reclaim the foreshore ween the high-water mark and lowwater mark in no way comes in conflict with the constitutional mandate contained in Article 297 of the Constitution. Under this Article such of those lands, minerals and other things of value as are underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and be held for the purposes of the Union. This Article conforms to a well recognised rule of International Law and State practice embodied in Article 3 of the Geneva Convention on the territorial see and the contiguous zone of 1958. According to the Geneva Convention, "the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast. In the Anglo-Norwegian Fisheries case the International Court of Justice held in 1951 that it had no difficulty in Anding that

for the purpose of measuring the breadth of the territorial sea, it is the loss-water mark, as opposed to the high water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State and clearly shows the character of territorial waters as appurtenant to the land territory". The Presidential Proclamation on territorial waters issued on 30-9-67 refers to the extension of the territorial sea to a distance of 12 nautical miles measured from the appropriate baseline, which, in the context, is a reference to the low-water mark.

The area between the high-water mark and low-water mark of the coast which has been brought under the Maharashtra legislation cannot be treated as underlying the ocean within the territorial waters or the continental shelf of India within the meaning of Article 297 of the Constitution. Neither the Presidential Proclamation of 1967 nor the accepted rules and principles of International Law warrant the conclusion that such within the territorial areas come waters.

In conclusion it may be stated that the reclamation of the foreshore by the Maharashtra Government under the scheme of reclamation formulated by them does not contravene, Article 297 of the Constitution.

भी मधु लिमचे :(बांका) इस के बारे में मैं भ्राप का मार्गदर्शन चाहता हूं क्योंकि मंत्री सहोदय ने सभी जो क्क्तब्य दिया है वह तथ्यों की कृष्टि से भी यसत है और कानून की कृष्टि से भी गलत है। तो इस के बारे में में भ्राप कौन सी अक्या निश्चित करना चाहते हैं। एक तो यह है कि एक अस्ताव मैंने मंत्री महोदय के खिलाफ दिया था, उस प्रस्ताव को भ्राप केंगे या कोई और अध्या क्कार्येंगे जिस के तहत मैं यह साबित कर सकू कि इन्होंने गुमराह 217 Ownership of Land below VAISAKHA 12, 1896 (SAKA) Matter Under 218: Sea within Territorial Waters (St.) Rule 377

करने वाला वक्तब्य दिया है भौर केन्द्र के भिष्ठकारों पर जो भितिकमण हो रहा है उस का समर्थन किया है जबकि इन का कर्तव्य है कि केन्द्र के अधिकारों की रक्षा करें। भाप जो भी प्रक्रिया बतायें मैं मानने के लिए तैयार हूं। मैं भ्राप के सामने सारे तथ्य रखने के लिए तैयार हूं।

MR. SPEAKER: I am not sitting here as a judge. I deal with procedures. I am not in a position to give my firm opinion as to the constitutional or legal side of it.

श्रीं मधु लिमथे: मैं प्रोसीजर की ही बात कह रहा हूं जब ये सदन को गुमराह कर रहे हैं जान बूझ कर भीर ग्रपने कर्तव्य को निभाने में ग्रसफल रहे हैं, तो ग्राप ही बतायें कि कौन सी प्रक्रिया है।

MR. SPEAKER: How can I give my firm opinion on a legal question?

श्री मधु लिमये : मैं ग्राप के सामने सारे सबूत रखने के लिए तैयार हूं । ग्राप मुझे सदन के सामने इन को रखने की इजाजत दीजिए।

MR. SPEAKER: I am not prepared to go into the legal or constitutional side of it.

श्री मधु लिमये : ग्राझ्यक्ष महोदय, फैक्टस के ऊपर भी ये गलत बोल रहे हैं।

MR. SPEAKER: He thinks he is right. You think you are right. How can II decide?

भी मधु लिमचे : प्रध्यक्ष महोदय, में प्राप को फैक्ट्स देने को तैयार हूं। या तो डाइरेक्सम 115 में यह मसला उठे या 184 में उठे। जो भी भ्राप बतायें मैं मानने को तैयार हूं।

एकं माननीय समदस्य : 115 में भी ही सकता है। श्री मधु लिमये : जो चाप बतायेंगे, मैं मानने के लिए तैयार हं।

MR. SPEAKER: As far as the legal: position is concerned, I am not going into that.

श्री मधु लिभंगे: लीगेलिटी की भी बात बताऊँगा भीर तथ्यों के भाषार पर भी बाताऊँगा।

MR. SPEAKER: I am not sitting: here as a judge.

12.42 hrs.

MATTER-UNDER RULE 377

TIME CAPSULE BURIED BY ALL-INDIA CONFEDERATION OF CENTRAL GOVERN-MENT OFFICERS ASSOCIATION ON 1-5-1974.

MR. SPEAKER: Now, we take up matter under Rule 377. There are three Members who have given notice on the same subject, Shri Bibhuti Mishra, Shri B. V. Naik and Shri Madhu Dandavate. Out of the three, I allow the Member who was the first to send in the notice.

SHRI B.V. NAIK (Kanara): The other day all the seven were permitted.

MR. SPEAKER: Shri Bibhuti. Mishra.

भी बिभूति भिक्ष (मोतीहारी): 377 के अन्दर में आपकी मार्फत गृह मंत्री जी का ध्यान इस और खोंचना चाहता हूं कि एक टाइम कैप्सूल तो सरकार ने लाल किले के सामने जमीन में नड़ाया था। यता नहीं उस में कीन कीन सी बातें है। उन बातों के बारे में बोड़ा सा अखबार में भी आवा था। यह कहा गया था कि देश के इंतिहास उस में लि बांगया है। मैं समझता हूं कि हम लोगों को भी पूछना चाहिए था कि हम टाइम कैप्सूल गाड़ने जा रहे हैं, उस में क्या क्या बातें लिखी जाएं। हम लोगों