

**BEFORE THE PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS AUTHORITY
AT NEW DELHI**

IN THE MATTER OF: - Revocation filed by Ms. Kavitha Kuruganti (Revocation Applicant) to revoke the registration of Potato variety FL 2027 registered in favour of M/s. Pepsico India Holdings Private Limited, (Registered Breeder).

IN THE MATTER OF: -

KAVITHA KURUGANTI

..... Revocation Applicant

-Versus-

PEPSICO INDIA HOLDINGS PRIVATE LIMITED

..... Registered Breeder

For the Revocation Applicant: - Ms. Kavitha Kuruganti (Revocation Applicant in person).

For the Registered Breeder: - Mr. Rajiv K Virmani, Sr. Advocate along with Mr. Dheeraj Nair, Ms. Tamoghna and Ms. Anjali Anchayil, Advocates for M/s. J. Sagar Associates.

ORDER

By this order I shall dispose of the PV-15 filed by Revocation Applicant on June 14, 2019 to revoke the registered potato variety FL 2027 registered in favour of the Registered Breeder,

The Registered Breeder had applied for registration of potato variety with denomination of FL 2027 under PPV&FR Act, 2001 on 18th June, 2011 with Application No. E18 ST1 11 151. The variety was applied as New Variety and revised and filed after Registrar's query letter No. PPV&FRA/Registrar/24-1/2011/393 dated 9th June, 2011. It was DUS tested in 2012 for one year as an Extant Variety. Upon



establishing the distinctiveness, uniformity and stability of the variety, the Registrar, advertised the same under Section 21 of PPV&FR Act, 2001 in Plant Variety Journal of India vide Volume No.09 No.04 on 1st April, 2015 under the Extant Variety category, Subsequently, it was registered on 1st February, 2016 under the category of Extant Variety. The Certificate of Registration granted to Registered Breeder in respect of potato variety with denomination FL 2027 is the subject matter of this instant Revocation Proceedings.

The Revocation Applicant has filed Revocation Application (PV-15) and duly filed reply to PV-16 filed by the Registered Breeder. The Registered Breeder has filed PV-16 (Notice of Opposition to Revocation) sur-rejoinder to the Reply filed by the Revocation Applicant to Notice of Opposition to Revocation (PV-16) and Evidence thereof. All of these are taken on record.

After allowing due submissions and responses, the Parties were finally heard on virtual mode on 21.09.2021.

CASE OF THE REVOCATION APPLICANT (RA): -

The case of the Revocation Application is summed up hereunder:-

The case of the Revocation Application is that she is a public spirited citizen working on sustainable farm livelihoods and concerned about the impacts of the registered plant variety on livelihoods of farmers and the environment they live in. The former is the subject matter directly associated with the purpose of seeking revocation and she wants to revoke the same on one or any of the grounds mentioned in Section 34 relating to clauses (a), (b), (c), (f)



and (h) of PPV&FR Act, 2001. Broadly, the grounds relates to the following namely:-

- a) That the grant of certificate of registration has been based on incorrect information furnished by the applicant
- b) That the certificate of registration has been granted to a person who is not eligible for protection under this Act and
- c) That the breeder did not provide the Registrar with such information, documents or materials as required
- f) That the breeder has not complied with the provisions of this Act or rules or regulations
- h) That the grant of certificate of registration is not in the public interest.

1. INCORRECT INFORMATION FURNISHED IN THE APPLICATION FOR REGISTRATION OF THE VARIETY FL 2027 FILED BY REGISTERED BREEDER :-

The Revocation Applicant states that the Registered Breeder in Sl. Number 5 of the Application in the column relating to the "Type of Variety" has claimed it as New Variety instead of applying as Extant Variety. The date of commercialization was mentioned as 17th December, 2009 in the application form and the same was filed on 18th June, 2011. In the declaration dated 16th February, 2012 which is a part of the application form, the Revocation Applicant has declared that they will abide by the provisions of the PPV&FR Act, 2001 and in this regard she emphasizes on most important provision in the Act, Section



39(1)(iv) which provides that a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protection under the act in an unbranded manner. Accordingly, Registered Breeder is bound to comply the provision under Section 39(1)(iv) of the PPV&FR Act, 2001.

2. NON COMPLIANCE TO THE PROVISIONS OF THE ACT AND VIOLATION OWN DECLARATION:-

The Revocation Applicant further contended that despite a declaration to abide by all the provisions of the Act and despite the certificate of registration itself making the registration subject to or conditional to the provisions of the Act, the Registered Breeder sued nine farmers of Sabarkantha and Aravalli districts of Gujarat in 2019 and 2018 respectively, in the name of infringement of its exclusive right. This came to the knowledge of the Revocation Applicant through media reports in 2019. The details of the withdrawn cases have been provided as heard and disposed of by the Commercial Court of Ahmedabad, Gujarat. have been provided. Under Article 27.3(b) of WTO TRIPPS agreement, India enacted this *sui generis* legislation on protection of plant varieties. From the legalese used both with Section 28 (Conferment of right) and Section 64 (infringement) both of which begin by "subject to the (other) provisions of this Act" and Section 39 which begins by "Notwithstanding anything contained in this Act", it is clear that the farmers' rights supersede the right given to the breeder or his successor or assignee or agent or licensee.



3. GRANT OF CERTIFICATE OF REGISTRATION NOT IN PUBLIC INTEREST.

However, despite having access to the best legal support allowing an unambiguous interpretation of Section 39(1)(iv) with regard to farmers' rights in an effort to tackle competition from local potato chip-makers, the Registered Breeder chose to sue nine farmers and the amount of damages claimed was more than five crore rupees and it is alleged that the basis of arriving at the figure is not apparent, given that the potato variety FL 2027 is an extant variety in trade and cultivation by farmers prior to the application for registration with the PPVFRA irrespective of the fact that the initial application from the company was for registration of the same as a New Variety, it is apparent that the farmers would have had knowledge about the variety as well as had, by tradition, easy and ready physical access to the variety before 2012, the year the variety was applied for registration of plant breeders' right on the variety. Revocation Applicant also states that it was clear from the way the Registered Breeder operates its contract farming operations which involve rejections of produce, such planting material would be available with farmers which would produce genetically true to type plant of the variety FL 2027 because potato tuber is a vegetative propagule that retains genetic integrity of the source plant intact. But the Registered Breeder created panic amongst farmers threatening their livelihood security and harassed them by dragging them to courts by filing cases of infringement against them. It is alleged by the Revocation Applicant that the Registered Breeder did so, after first recruiting a private detective agency to pose as potential buyers offering



attractive prices to the farmers, taking secret video footage and also taking unauthorized samples of potato from the farms and getting it tested. According to the Revocation Applicant, all of this is unethical and in a clear non-compliance to the provision related to farmers' rights which is unambiguous in the Act.

There was a hue and cry against farmers being unnecessarily harassed in this manner by Registered Breeder. It was clearly intimidation and harassment of farmers that the Registered Breeder who is the Indian Corporate unit of a globally operating MNC, was resorting to. It was due to enormous public and political pressure that made the Registered Breeder to withdraw all the cases against farmers formally on 10th May, 2019 in two different Courts.

4. CERTIFICATE OF REGISTRATION HAS BEEN GRANTED TO A PERSON WHO IS NOT ELIGIBLE FOR PROTECTION UNDER THE ACT AND THE BREEDER DID NOT PROVIDE THE REGISTRAR WITH SUCH INFORMATION, DOCUMENTS OR MATERIAL AS REQUIRED FOR REGISTRATION UNDER THE ACT.

Further, Revocation Applicant is of the opinion that the definition of Breeder as per Section 2 (c) of PPV&FR Act, 2001 is something that the Registered Breeder does not fit to. The Registered Breeder when he claims as Registered Breeder of the potato variety FL 2027 has to fit into this definition of a Plant Breeder under the PPVFR Act, which means that he should have evolved or developed the said variety. The Registered Breeder has attached a copy of deed of assignment dated 26th September,



2003 executed by one Dr. Robert W. Hoopes in favour of Recot Inc. United States of America herein, the denomination "2027" is pen-written as an after-thought and not as an integral part of the Assignment. Such an assignment is on white paper. The application of the Registered Breeder to the Registrar for registration of potato plant variety FL 2027 as new variety, however, did not have anything to show that the Registered Breeder is indeed the Assignee having ticked the Assignee option in Form I of its application (Sl. No.1 Identity of the Applicant) whereas the assignment is to Recot Inc who is not Registered Breeder.

In Form 1 at Sl. No.7 where the name of the Plant Breeder is to be specified, Dr. Robert W Hoopes is mentioned. In the declaration dated 16th February, 2012, one Mr. Rajeev Wakhle on behalf of the Registered Breeder states the following "I/We hereby declare that no person other than the person or persons involved in the breeding, or discovery or development of the candidate variety", which *inter alia* is to be interpreted as referring to Dr. Robert W. Hoopes. The certificate of Registration issued by the Registrar of the Authority in favour of the Registered Breeder states that Registered Breeder has declared that they have developed potato variety FL 2027 as Extant VCK (Variety about which there is common knowledge) and that he is the true breeder thereof (or the legal representative or assignee of true breeder), the basis for which does not exist in the application filed for the purpose of registration by the Registered Breeder however.



It is stated that the Section 16 of the Act which specifies persons who may make an application for registration of plant varieties including any successor of the breeder of the variety or any person being the assignee of the breeder of the variety in respect of the right to make such an application. However, in this case, the Assignment is in the name of Recot Inc. USA, with its successors, legal representatives and assignees which do not mention Registered Breeder anywhere.

Section 18(3) of the Act requires that where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the right to apply for registration, or within such period after making the application as may be prescribed, a proof of the right to make the application. Form PV-2 which is about "Proof of Right to Make Application" has been left empty, drawn up by one Dr. Robert W. Hoopes which refers to a "Document supporting PV-2" which is a copy of assignment, is pointed out as an assignment to Recot Inc. USA. It has further been contended that another declaration which is under Section 18(1)(h) of the Act only says that the genetic material or parental material acquired for breeding, evolving or developing the variety denomination FL 2027 of Potato has been lawfully acquired and only has a plain white sheet signed only by Dr. Robert W Hoopes without any authentication as required in such cases, as the document being enclosed in support of such a declaration by PV-2. If Dr. Robert W Hoopes was indeed the Plant Breeder (who did not apply for registration however), then it is alleged that the Registrar of the Authority granted the certificate of registration to Registered



Breeder, a person who is not eligible for protection under this Act. It is also clear that Registered Breeder who claims to be the Assignee of the Breeder did not provide to the Registrar any such documentary evidence as required for registration under the Act. The Registered Breeder is willfully defying some clear provisions of the Act and that action of the Registrar of the Authority in granting the Certificate granting the rights on the variety FL 2027 to Registered Breeder is against public interest. Further, Registered Breeder does not fit into a definition of a plant breeder nor has the Registered Breeder provided materials in support of its declarations etc.

Further, Revocation Applicant in her reply to PV-16 (Notice of Opposition to Revocation) states as follows:-

The Revocation Applicant argues on three grounds in Section 34 which are as follows:-

- a) That the Registered Breeder did not provide the Registrar with such information, documents or material as required for registration under the Act. Section 34(c)
- b) That the breeder has not complied with the provisions of this act or rules or regulations made thereunder Section 34(f).
- c) That the grant of certificate or registration is not in public interest Section 34(h).

The allegations of the Registered Breeder in his opposition to the revocation application that the application is an



“afterthought” and is malafide or that the Revocation Applicant had vested interests are denied by the Revocation Applicant. The Revocation Applicant continues to contend that registration of Registered Breeder’s Plant Variety FL 2027 was based on inadequate and incorrect paperwork and that breeder did not provide the Registrar with such information, documents or material as required for registration under this Act.

The Revocation Applicant states that the Registered Breeder is building the formal paperwork required to prove the legal acquisition of the materials used for developing FL 2027 only during the processing of his application in the Indian regulatory regime. Section 16 of the PPV&FR Act, 2001 provides for “persons” who may make an application for registration. Therein, sub-section (c) specifies that any person being the assignee of the breeder of the variety in respect of the right to make such application may apply, and sub-section (e) specifies that any person may apply when authorized in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf. The Registered Breeder admits that the right to register for protection of plant breeder’s right was assigned orally only which is only an afterthought claim for authenticity (neither proving the right to make such an application nor can it be authorized in the prescribed manner). The Registered Breeder realized the need for such an essential document that should have been there before he applied for registration of the variety for protection of the rights of its plant breeder in India, after the Revocation Applicant applied for the revocation of the registration of the potato variety FL 2027 as revealed by the Registered



Breeder's notice to oppose the revocation application which clearly shows that formalizing the arrangement was made only on 12th September, 2019 as an after-thought.

On 18th February, 2011 the Registered Breeder filed application for registration of potato variety with denomination FL 2027 under the category of new variety. The Registrar after examining the application in exercise of his power under Section 20 of PPV&FR Act, 2001 issued a query letter dated 2nd/9th June, 2011 (F. No. PPV&FRA/Registrar/24-1/1/2011/1393) asked for additional information to be submitted after examination of the submitted application. Such additional material requisitioned by the Registrar of PPV&FR Authority included the following:

- a) PV-2 duly signed by the concerned breeders whose names are mentioned in column no.7 of the application form;
- b) Counter-signing of such a PV-2 by the Registered Breeder.
- c) Copy of the deed of assignment between the Breeder and the company.

For placing information on record, the Registered Breeder's application for registration at column 7 mentions Dr. Robert W Hoopes as the breeder (Ref. Page 18 of Annexure A which is copy of one of the legal suits filed by Registered Breeder in Ahemdabad Commercial Court)

In Registered Breeder's notice to oppose the Revocation Applicant, in para 13, page 5, the Registered Breeder contends that



Form PV-2 with proof of assignment of all rights in relation to FL 2027 from Dr. Robert W Hoopes to FLNA was submitted along with a revised application dated 16th February, 2012. In the same para, Registered Breeder also admits that *"for the assignment of rights from FLNA to PIH, no document was submitted as FLNA had made an oral assignment of the right to register FL 2027 and allowed PIH to seek registration of FL 2027 under the Act"*. No such document support for validity of such a claim was enclosed. The Revocation Applicant has contended that the Registered Breeder did not provide the Registrar with such information, documents or material as required for registration under Section 34(1)(c) of PPV&FR Act, 2001.

It is submitted by the Revocation Applicant that the relevant portion of the Form PV-2 has been left incomplete in Registered Breeder's application dated 16th February, 2012 with signatures of Mr. Rajeev Wakhle of Registered Breeder appearing at the bottom of the empty form, even after the Registrar's letter dated 9th June, 2011 requisitioning some prescribed material. (Annexure A of Reply to PV-16 has copies of the application that Registered Breeder had appended to a legal suit against a Gujarat potato farmer and on a page with number 26 written on top has an empty PV-2).

Revocation Applicant indicates that for the very first time, a copy of the certificate of incorporation dated 20th January, 2004 evidencing the change of the name Recot Inc. to Frito Lay North America (FLNA) is provided to the Authority, only after the current proceedings have been initiated by the Revocation



Applicant. It is also admitted by Registered Breeder that no document was submitted to show that FLNA made an oral assignment to register FL 2027 to Registered Breeder.

It is apparent from the Registrar's letter to Registered Breeder in June, 2011 in response to the initial application that there was missing information /paperwork in the application - however, even after being asked for the same, Registered Breeder did not comply with full paperwork. There is no provision to recognize oral rights and its transfer under PPV&FR Act and so the very application to seek registration should have been considered invalid.

According to Registered Breeder, in India, the registered variety FL 2027 was first put to commercial use in 2009 by importing it from the USA through FLNA (Frito Lays North America)

According to the Revocation Applicant, the permission given by NBPGR (National Bureau of Plant Genetic Resources), the agency responsible in India to import seeds/planting materials for research purposes in India, to import 15 hybrids of Frito Lay North America to Central Potato Research Institute, Shimla is dated 7th January, 2010. Elsewhere, in the application for registration to the Registrar, the date of first sale of the variety is mentioned as 17th December, 2009.

In another instance noticed, in the lawsuit filed against a Gujarat farmer in early 2018, the Registered Breeder appended an



Invoice dated 18th December, 2009 which included several kilograms of FC-5 (FL 2027) potato seed of different grades.

In another Annexure there is also evidence provided by Registered Breeder of Central Potato Research Institute having tested FC-5 variety way back in June 2007. Apart from such inconsistent information there seems to be violations to India's Plant quarantine regulations also, and this should also be treated as being against public interest.

It is therefore emphasized that the 12th September, 2019 letter from Frito Lay North America to PPV&FR Authority is clearly fresh paperwork being built by Registered Breeder now to meet the requirement of the Authority, the kind of information/documents/material which neither existed before the Revocation Applicant was filed nor were these submitted to the Authority as part of the application for registration, as is required for registration under the Act, despite being requisitioned by the Registrar in 2011. The Revocation Applicant therefore, reiterates that sub-section (c) of Section 34 of the PPV&FR Act, 2001 becomes relevant here and applicable in this case.

5. LEGISLATIVE INTENT OF INDIA'S LAWMAKERS WAS TO UPHOLD FARMERS RIGHTS IN AN OVER-ARCHING MANNER:

The legislative intent of India's lawmakers, in according a place of supremacy to Farmers' Rights under Section 39(1)(iv) is reflected in the legalese used in this section *vis-à-vis* other sections that a registrant of a plant variety might invoke, as well as in the report of the Joint Parliamentary Committee on the Protection of



Plant Varieties and Farmers Rights Bill 1999, placed in the Parliament in August, 2000. The intent of the law-makers points to the overarching protection of farmers' traditional rights over seeds or seeding material to produce crops as well as to keep seeds for themselves and for others, by accessing any seed or planting material with only ban on sale of such seed in a branded manner in the case of a registered variety with an inbuilt exemption to committing of the same by innocence.

The contention of Registered Breeder that Section 39(1)(iv) is not all encompassing is rejected - similarly the contention of Registered Breeder of exclusive rights by virtue of Section 28 is challenged and rejected.

The Revocation Applicant also strongly challenges the Registered Breeder who, in his notice to oppose revocation, has contended that the reliance placed by the Revocation Applicant on Section 39(1)(iv) is baseless.

The legalese used at the beginning of Section 39, "Notwithstanding anything contained in the Act" makes this section an over-arching provision, and cannot be sought to be limited by way of citing other sections which start with a phrase that says, "subject to the other provisions of this Act". It is clear from the statute itself which provisions are supreme.

The Revocation Applicant contends that Section 64 related to infringement was used by Registered Breeder frivolously knowing all the above facts fully, in order to harass and intimidate farmers and therefore this is a matter of public interest.



Farmers in India have access to a vegetatively propagated material called FL 2027/FC-5 for years now. FL 2027 variety was first used commercially/ sold in India in 2009 as per Revocation Applicant. Yield performance of FL 2027 was tested in four locations in Rabi 2009-10 as presented by Registered Breeder in Point 7 of its application for registration ("Particulars of comparative trial conducted by the applicant if any" in the technical questionnaire). Further, an invoice dated 18.12.2009 is also proof of sales having begun in 2009. On the other hand, a certificate of registration was granted by the PPV&FR Authority only in 2016, that too as an extant variety. An important point to note with regard to registration process and grant of certificate is that from 2009 to 2016 namely for seven years or so, farmers in India had access to the said variety.

It is obvious and expectable that farmers will continue to use any material convenient or suitable for them, including because the statute has explicitly entitled them to do so.

6. FIELD LEVEL FACT FINDING UNDERTAKEN BY THE REVOCATION APPLICANT.

According to the Revocation Applicant application, it is clear from the interactions of Revocation Applicant with various stakeholders in the potato chips value chain and other publicity material, that FC-5 (FL 2027) is reasonably accessible to farmers in Gujarat. This comes from four sources in any given season i) from the company itself in its so-called contract farming arrangements (ii) from farmers who do not even take to the vendor/ company undersized potatoes after doing "contract farming" for the



company (tubers less than 45 mm) (iii) vendors who procure from ("contracted") FC-5 (FL 2027) farmers but divert it into the open market, as well as (iv) from sources in Punjab. There was much blame-game that different stakeholders engaged in, with blame heaped also on corrupt staff members of the Registered Breeder who also help FC-5 (FL 2027) to reach the open market.

The Revocation Applicant has stated that she has substantiated her statements that seeding tuber of FC-5 potato variety is indeed available in the open market while rejecting the response to the opposition to the Revocation Applicant by Registered Breeder in PV 16. The Revocation Applicant transfers the onus to Registered Breeder to prove that in its claimed purchase of minimum of 7-10% of the total production each year of undersized potato, farmers at large did not have any scope to access the variety and that Registered Breeder ensured that he has not procured any FC-5 potato outside of its closed contract farming supply chains over the years from the open market.

7. HARASSMENT AND INTIMIDATION OF FARMERS IS A MATTER OF PUBLIC INTEREST

The Registered Breeder argued (in paras 19-21) in its notice to oppose revocation that it took judicial recourse in Gujarat against certain individuals who were illegally dealing in Registered Breeder's variety FL 2027, and also sought a permanent injunction to restrain infringement. The allegation that farmers who were sued, alluded to above as certain individuals were "illegally dealing" with FL 2027 is baseless and unsubstantiated. As per the Act, there cannot be any illegal dealing related to a



protected variety by a farmer except sale of branded seeds. Registered Breeder's assertion that it sued farmers to protect Registered Breeder's rights and safeguard farmers' larger interests is without any basis. It is this misreading of the law by the registration certificate holder of potato variety FL 2027 that spurs the Revocation Applicant to argue her case as a matter of public interest. It was further argued that the Registered Breeder created panic and anxiety amongst the sued farmers is contained in the affidavits from two of the sued potato farmers in Gujarat and the other farmers have similar stories to narrate. These farmers not only underwent mental stress and trauma, despite the PPV&FR Act, 2001 being clear and unambiguous on their rights, but also incurred certain costs in having to defend themselves. They had to seek help from government and some farmers associations.

8. THERE IS NO BASIS FOR THE REDRESSAL SOUGHT

When Registered Breeder, sued 4 farmers of Gujarat in 2019 in a Commercial Court in Ahmedabad, the Registered Breeder not only wanted a permanent injunction restraining the farmer from producing FL 2027, but also estimated damages worth Rs.1,05,00,000 (Rupees One Crore and Five Lakhs) inflicted upon the company by the alleged infringement of each farmer of Registered Breeder's IPR. When the value of the produce by the farmer is only around Rs.2,50,000/- (at around an average of 25 tons per hectare of potato productivity in Gujarat on an average, and a price of Rs.10/- per kg of potato, the entire value of the produce can only be two lakh fifty thousand rupees or so per hectare), it is not clear how each sued farmer could have done a



damage of one crore five lakh rupees given the landholdings that the farmers own. It is apparent that the Registered Breeder fixed an arbitrary, baseless amount just so that it can fulfil the pecuniary criteria for admissibility of a case in a commercial court, without any concern for the harassment it was subjecting the farmers to, by praying in its legal suit for a decree to be passed and order of damages to the tune of Rs.1,05,00,000/- from each farmer, and punitive and exemplary damages in favour of the Registered Breeder.

9. FILING OF CASES BY REGISTERED BREEDER IN GUJARAT IN THE NAME OF ENFORCEMENT OF A RIGHT GRANTED TO IT UNDER PPV&FR ACT, 2001 IS NON-COMPLIANCE WITH THE PROVISIONS OF THE ACT, AND IS IN ITSELF A VIOLATION OF THE UNDERTAKING GIVEN BY THE REGISTERED BREEDER AT THE TIME OF REGISTRATION:

The Registered Breeder's contentions and annexures on expending huge amounts of time, energy, money effort and resources in producing, selling, marketing, distributing, importing and exporting of the registered variety is immaterial to the current application or Registered Breeder's notice to oppose. However, Registered Breeder's citing of numbers, which show an expenditure of INR 2.81 crores for R&D including on FL 2027 from 2012-17 for a six year period after the Registered Breeder imported a developed variety FL 2027 illustrates the incorrect and desperate argumentation that the company is ready to indulge in. As such the evidence in the form of Annexure-11 on Page 48 has no reference to FL 2027. Further, the amount of INR 93.09 crores



spent between 2013-17 (5 year period) for production of all varieties including FL 2027 is worth noting for another reason-this shows an average of Rs.18.62 crores spent annually, for approximately 60,000 tonnes of potatoes of FL 2027 and other varieties every year. If this is the expenditure of the Registered Breeder for its entire production of potato varieties of all kinds through collaboration with around 14000 farmers, it is unclear how it estimated damage of Rs. 1,05,00,000/- (Rupees One Crore Five Lakhs Only) inflicted on it by each sued farmer. It is worth noting that the original seed and its right from the breeder was transferred at a token price of 1 USD in USA and nothing else other than propagation of planting material was undertaken in India, to the best of knowledge of Revocation Applicant.

Though the arguments of Revocation Applicant is being recorded the issue of FAQ is not relevant herein. The reference to FAQs of the Authority as well as the definition of farmers etc., as averred by the Revocation Applicant and opposed by the Registered Breeder as well as rebutted by the Revocation Applicant with subsequent response by Registered Breeder, the last responses by both parties having occurred after the revised FAQs were uploaded (indicating both parties were aware of the current position of the contents of FAQs as revised and uploaded by the Authority which was also much before the hearing; and that FAQs do not make up legally quotable document when their legally valid source of PPVFRA Rules (2003) with amendments up to 2021 as well as the PPVFR Act (2001) are available for any interpretation for execution of any legal formality related to the provisions on Plant Breeder's and Farmers' rights or the



registration process of plant varieties, the contentions of both parties quoting the FAQs shall not be given any credence in arriving at the judgement. The factual position of revised version of the FAQ especially about the points referred was available to both parties before the final hearing. Both parties were aware before their submission of evidences or additional submissions that the FAQs were under revision. Hence the point shall not be dealt on the merit of the points related to FAQs. The statute clearly defines a Farmer in Section 2(k) of PPV&FR Act, 2001. .

10. REVOCATION APPLICANT REJECTS THE NOTICE OF REGISTERED BREEDER TO OPPOSE THE APPLICATION FOR REVOCATION OF CERTIFICATE.

The Revocation Applicant notes, and requests the attention of the Authority to the reality, that Registered Breeder is in fact providing some documents or material as required for registration under this Act to the Authority only in September, 2019 after the Revocation Application is processed, whereas, the same information was not provided with the application for registration which was made by Registered Breeder in 2011. It is also to be noted that the required additional material now being provided was not provided by Registered Breeder even after being asked by the Authority in 2011 itself. The claim that the right to register was duly assigned is incorrect as has been explained in the earlier paragraphs here. It also is highlighted in newspaper reports submitted along with the Revocation Application including with regard to Recot Inc. and FLNA and FLNA to Registered Breeder- no such records are provided and it



is obvious that the assigning took place only after June 2019, after the Revocation Applicant sought revocation of the registration of the variety FL 2027.

Accordingly, the Revocation Applicant prays that the certification of registration granted in favour of potato variety FL 2027 be revoked under Section 34:

- (i) Since its grant and its continuation is not in the public interest with farmers being harassed and intimidated using the Certificate granted,
- (ii) Since the breeder did not provide the Registrar with the information, documents and materials as required for registration under the Act and
- (iii) Since the Registered Breeder has not complied with all the provisions of this Act.

CASE OF THE REGISTERED BREEDER

The Registered Breeder opposes the Revocation Application seeking revocation of the certificate of registration granted in respect of potato variety denominated as FL 2027 has been filed without any basis in law or fact. The Application has been filed malafide with a view to mislead the Authority. Although the Revocation Applicant claims that she is a public spirited citizen working on sustainable farm livelihoods and is concerned about the public interest, a perusal of the present Revocation Application makes it clear that the same is motivated, ill intended and mischievous attempt to deprive the Registered Breeder their rightful protection of their registered variety



FL 2027 benefit Registered Breeder's competitors on the basis of incorrect and misleading averments. The Registered Breeder is a company incorporated under the Companies Act, 1956. It is a subsidiary of PepsiCo Inc., which is one of the world's premier consumer products company, incorporated under the laws of USA.

The Registered Breeder's Registered Variety FL 2027 is under challenge in the instant Revocation Application. The potatoes bred from the registered potato variety FL 2027 registered in favour of the Registered Breeder is used by the Registered Breeder for manufacturing its product potato chips sold under the brand name 'LAY'S'. FL 2027 (Trade name - FC-5) was developed in the United States by Dr. Robert W. Hoopes, a plant breeder of Frito-Lay Agricultural Research, a division of PepsiCo Inc. which is the parent company of Registered Breeder. Dr. Robert W. Hoopes assigned the entire right, title and interest in, to and under the said variety to Recot Inc. (Presently known as Frito Lay North America Inc., a group Company of PepsiCo Inc) vide a Deed of Assignment dated 26th September, 2003. For registering the Plant Variety under the Act in India, Frito Lay North America Inc. (FLNA) had orally assigned the right to register FL 2027 in India to Registered Breeder and allowed Registered Breeder to seek registration of the Potato variety FL 2027 under the Act. Such, an inter-se assignment between group companies is valid in law and equity. The Registered Variety is a hybrid of FL1867 and Wishchip varieties. The term FL 2027 was coined and assigned to the said registered variety. In development of such registered variety, the Registered Breeder and its predecessors in interest have carried out extensive studies, research & development and carried out trials, and have spent huge amounts



of money towards the same. In India, the registered variety FL 2027 was first put to commercial use in 2009 by importing it from the United States of America through FLNA. It has been since traded under the trademark 'FC-5' by Registered Breeder. Subsequently, the Registered Breeder applied for registration through Form 1 with Application No.E18 ST1 11 151 filed on 18th February, 2011 before this Hon'ble Authority. In the said application, the Registered Breeder had inadvertently referred to the FL 2027 as 'new variety'. The Registered Breeder has submitted the copy of the import documents. Subsequent, to the filing of Application, the Registered Breeder received a letter dated 9th June, 2011 issued by this Hon'ble Authority suggesting certain corrections to be made in the Application Form and seeking some additional information. The Registered Breeder vide its letter dated 8th February, 2012 informed this Authority that the additional information called for by the Authority had to be obtained from USA and as such, the same took some time. Further, Registered Breeder informed this Authority that there was another correction which was required that is Registered Breeder had to apply for registration under the Extant Variety Category instead of New Variety category. The Registered Breeder also informed the Authority that for applying under Extant Variety Category they had applied under New variety category. The Registered Breeder also informed this Authority that for applying under the New Variety, it had deposited Rs.10,000/- whereas for applying under Extant Variety Category, the applicable fee was only Rs.5,000/- as such the Registered Breeder requested this Authority to consider the change of category for registration of Potato Variety FL 2027 and also to suggest the way forward for adjustment/ refund of



the additional amount deposited by Applicant. Subsequently, the Registered Breeder submitted a revised application dated 16th February, 2012 for registration of FL 2027. However, in the said application, it was again inadvertently stated that FL 2027 was sought to be registered as New Variety. Upon immediately identifying the error, the Registered Breeder's representatives rectified the error and made the requisite changes in the application dated 16th February, 2012 by hand. The same was taken on record and is available with the Registry. The Registered Breeder along with its revised application dated 16th February, 2012 submitted Form PV-2 with proof of assignment of all rights in relation to FL 2027 from Dr. Robert W. Hoopes to FLNA. For the assignment of rights from FLNA to Registered Breeder, no document was available with Registered Breeder to submit to the Authority as FLNA had made an oral assignment of the right to register FL 2027 and orally permitted Registered Breeder to seek registration of the Potato variety under the PPV&FR Act, 2001. The same is borne out from the contents of letter dated 12th September, 2019 issued by FLNA. This Authority vide letter dated 14th June, 2012 informed Registered Breeder that the Potato Variety FL 2027 was being considered for registration as an Extant Variety instead of a New Variety. Further, Registered Breeder was also informed that the registration fees of an extant Variety was Rs.5,000/- and since the Registered Breeder had already deposited Rs.10,000/- for registration under New Variety category, the remaining amount of Rs.5,000/- will be adjusted in DUS test fee. Thereafter, the Registered Breeder received registration for the Plant Potato Variety FL 2027 on 1st February, 2016 as an extant Variety vide a Certificate of Registration for a period of six years



from the date of registration. Post such registration of FL 2027 as an extant Variety, the Registered Breeder by virtue of Section 28 of the Act, has the exclusive right to produce, sell, market, distribute, import and export the registered variety. The same was publicized periodically after grant of registration of FL 2027. The Registered Breeder expends huge amount of time, energy, money, effort and resources for producing, selling, marketing, distributing, importing and exporting the registered variety. The process of production of about approximately 60,000 tonnes of potatoes of the FL 2027 every year itself is very strenuous and requires great meticulousness and dedication. The Registered Breeder has also expended huge amounts towards research and development of its registered varieties in India, including FL 2027, to the tune of INR 2.81 Crores (2013-2017). The Registered Breeder has also incurred substantial costs towards production, sale, distribution and other aspects of its registered varieties, including FL 2027 to the tune of INR 93.09 Crores (2013-2017).

The Registered Breeder works with thousands of local farmers to grow specific protected variety of potatoes for it, including FL 2027. The Registered Breeder as of 2017-2018 has a total of 14000 (Approx) collaborative farmers in India. As a company, Registered Breeder has been the largest process-grade potato buyer and amongst the first companies to collaborate with farmers. The Registered Breeder's collaborative potato farming program is the best in class and is built on strong backward and forward linkages that improve livelihoods by using protected seeds.



**FILING OF CASES IN GUJARAT BY REGISTERED BREEDER
FOR PROTECTION OF ITS REGISTERED PLANT VARIETY:**

The Registered Breeder took judicial recourse in the state of Gujarat under Section 64 of the Act, against certain individuals who were alleged to be illegally dealing in Registered Breeder's Registered Variety FL 2027 and also sought a permanent injunction to restrain infringement and of Registered Breeder 's Registered Variety FL 2027 and brand name FC-5 respectively. This was done to protect the Registered Breeder's rights and safeguard the larger interest of farmers who were claimed to be engaged with Registered Breeder and who are using and benefitting from seeds of Registered Breeder's Registered Variety. The Registered Breeder's actions were based on a valid registration issued by the Authority and for assertion of legal rights available under the Act.

Section 64 of the Act confers the right of the breeders (Registered Breeder) to sue for infringement committed by anybody in India against the plant breeders' rights on the registered plant variety.. However, the cases filed in the Commercial Court of Ahmedabad against the identified individuals under Section 64 of PPVFR Act 2001 were withdrawn by Registered Breeder relying on its discussions with the government to find a long term and an amicable solution of issues around its seed protection.

It is submitted that the reliance placed by the Revocation Applicant on Section 39(1)(iv) of the Act to contend that the actions initiated by Registered Breeder were against public interest is baseless. According to Registered Breeder, the protection given to farmers under Section 39(1)(iv) of the Act is only for small and



marginal farmers involved in subsistence farming who can claim farmers rights. The same has been explained in the FAQs issued by the PPVFRA which version was withdrawn in March 2020 by the Authority citing requirement for revision. According to Registered Breeder, Section 39(1)(iv) of the Act, cannot be read as a comprehensive protection to a farmer allowing blanket infringement upon the right of a Registered Breeder. Without prejudice to the aforesaid facts, it is submitted that Section 42 of the Act expressly provides for protection of innocent farmers' who may not be aware of the existence of the right in respect of a registered variety. The same clearly evidences that the protection granted under Section 39(1)(iv) is not all encompassing in nature. Section 39(1)(iv) of the Act further qualifies the exceptions provided to "farmers" for utilizing a protected variety. As explained above, Section 39(1)(iv) of the Act provides protection to the farmers to save, use, sow, re-sow, exchange, share or sell the registered seed variety protected under the Act in same manner as he was entitled before the coming into force of this Act. The Act came into force on 30th October, 2001. Registered Breeder is of the view that the intention of the protection given under the aforesaid section to a farmer is to ensure that a farmer who was cultivating or selling a plant variety before coming into force of the Act should not be deprived and ought to be allowed to continue to cultivate or sell that Plant Variety notwithstanding that some person may get registration of the same plant variety after the Act came into force. As per the facts of the present matter it can be seen that the FL 2027 were first developed in United States of America around the year 1996 and was put into commercial use in the year 2009 in India, even though registration came into force in



February, 2016. It cannot be claimed that FL 2027 was being cultivated and sold by the individuals (against whom the Registered Breeder had filed cases) before coming into force of the Act. In other words, such individuals are required to lead evidence to prove that they are entitled to protection under Section 39(1)(iv) of the Act, which would include establishing that such farmer was cultivating and selling the variety prior to 2001. As per Registered Breeder's stand, the protection granted under Section 39(1)(iv) of the Act would not extend to individuals against whom Registered Breeder had initiated action for infringement of its registered plant variety FL 2027. The Registered Breeder had initiated the suits for countering the infringement of its registered variety with bona-fide intentions and in complete accordance with the provisions of the Act.

Accordingly, the Revocation Application may be dismissed with costs in terms of Rule 22 A of PPV&FR Rules, 2003.

The true copy of board resolution authorizing the authorized signatory to sign PV-16 (Notice of Opposition to oppose the Revocation) is marked as **Exhibit R-1**. The certificate of Registration granted by this Authority for FL 2027 by way of the certificate of registration dated 1st February, 2016 is in itself a proof of valid registration which was validly obtained after proper scrutiny of documents submitted to the Authority. The Registration certificate is marked as **Exhibit R-2**. The details of registration of FL 2027 annexed at page 38 of the opposition marked as **Exhibit R-3**. The FL 2027 (Commercial name-FC-5) was developed in the United States by Dr. Robert W. Hoopes, a plant breeder and employee of Frito-Lay Agricultural Research, a division of PepsiCo Inc., which is the parent



company of Registered Breeder. Dr. Robert W. Hoopes assigned the entire rights, title and interest in and under the said variety to Recot Inc., (presently known as Frito Lay North America Inc., a group company of PepsiCo Inc.,) vide a Deed of Assignment dated 26th September, 2003 which is annexed as **Exhibit R-4**. The copy of certificate of incorporation evidencing the change of name of Recot Inc., to Frito Lay North America Inc (FLNA) is marked and exhibited as **Exhibit R-5**. Copy of the documents evidencing that the patent holder's name for FL 2027 was changed to FLNA upon name change of Recot Inc., to FLNA is annexed and marked as **Exhibit R-6**. FL 2027 is a hybrid of FL 1867 and Wishchip varieties. In the annexure to Reply, Dr. Robert W. Hoopes, while detailing the lawful acquisition of the parents of Frito Lay varieties including FL 2027 has clearly stated that "... the parents of FL2027 are FL 1867 and Wischip. Wischip is a public variety, developed by the University of Wisconsin, and is freely available for commercialization or breeding." The document signed by Dr. Robert W. Hoopes stating that the FL 2027 is a hybrid of FL 1867 and Wischip annexed to page 30 of the Reply is marked and exhibited as **Exhibit R-7**.

The Chartered Accountant's certificate dated 28th February, 2018 verifying the cost incurred by Registered Breeder towards research and development of registered varieties including FL 2027 is annexed and marked and exhibited as **Exhibit R-8**. In India, the Registered Variety FL 2027 was first put to commercial use in 2009 by importing it from the United States of America through FLNA first in 2007. In 2007, Central Potato Research Institute, Shimla (CPRI) conducted tests after first receiving tissue plantlets including FL 2027 (referred therein as FC-5) for post entry quarantine purposes is



annexed to Reply at Page 33 and marked and exhibited here as **Exhibit R-9**. The seeds generated from such imported tissue plantlets were only introduced for commercial use in December, 2009 as the process of multiplying the tissue cultured plantlets duly imported by Registered Breeder through CPRI - multiplying it via a tissue process, production of mini-tubers in a greenhouse, multiplication into G1, G2, G3 seeds - takes around 4-5 years. Therefore, after the first import in 2007, the seeds generated were sold commercially only in December, 2009 after the completion of the first cycle of multiplication. The above evidences prove that the import of the tissue cultured plantlets for Registered Breeder was validly carried out. Copy of the Civil Suit filed by Registered Breeder before Gujarat High Court citing the process of tissue cultured plantlet multiplication is annexed to Reply at internal page number 11-12 of the Civil Suit filed by Registered Breeder and marked and exhibited as Exhibited as **Exhibit R-10**.

The National Bureau for Plant Genetic Resources is the relevant regulator to import FL 2027 tissue cultured plantlets during February 2009. FL 2027 was also imported in February 2009 as importing seeds/ tissue plantlets are a continuous process. The document issued by FLNA annexed to the Opposition at Page 28 evidencing that NBPGR was the relevant importer of FL 2027 in February, 2009 for CPRI is marked and exhibited here as **Exhibit R-11**.

The plantlets after 3-4 years of multiplication lose their vigour. For this purpose, to replenish the tissue cultured plantlet so that the production process is carried out through, Registered



Breeder raised a request with CPRI for import of tissue cultured plantlets. Then as per the protocol CPRI requested NBPGR to issue import permits to import tissue plantlets from FLNA for Registered Breeder. To replenish the tissue cultured plantlets of FL 2027, on Registered Breeder's request CPRI imported tissue cultured plantlets of FL 2027 in 2010 as well. For the same, an import permit was granted by ICAR to the Director of NBPGR dated 7th January, 2010 to import seeds of various varieties including FL 2027 for CPRI. The same is evidenced by the copy of the permit issued by ICAR to import seeds and planting material annexed to the Opposition at Page 33 and marked and exhibited as **Exhibit R-12**. The other relevant import documents annexed at Pages 29-32 of the Opposition is exhibited and marked here as **Exhibit R-13**.

From 2009, the Registered Breeder has traded FL 2027 under the trade name FC-5. The Registered Breeder applied for registration through Form 1 with Application No.E18 ST 1 11 151 filed on 18th February, 2011 before the PPVFRA. In the said application, the Registered Breeder admits to have inadvertently claimed the variety, FL 2027 as a 'New Variety'

It is pointed out during the revocation proceedings that for registering FL 2027 under the PPV&FR Act in India, FLNA had orally assigned the right to register FL 2027 in India to Registered Breeder and allowed Registered Breeder to seek registration of the FL 2027 under PPV&FR Act, 2001. In this regard, Mr. Paul Schrier, the Assistant Secretary of FLNA has written letter dated September 12, 2019 evidencing that FLNA had allowed Registered Breeder to seek registration under the PPV&FR Act, 2001. The said letter dated 12th



September, 2019 is annexed to the Opposition at Page 24 is marked and exhibited as **Exhibit R-14**. The Copy of the authority given to Mr. Paul W Schrier to act as an officer of FLNA is annexed to the Opposition at Page 25-27 and marked and exhibited as **Exhibit R- 15**.

After the filing of the application, Registered Breeder received a query and directions letter dated 9th June, 2011 issued by Registrar, PPVFRA seeking certain corrections to be made in the Application for registration of potato variety FL 2027 and seeking additional information. The copy of the letter dated 9th June, 2011 is annexed to the Opposition at Page 34 and marked and exhibited as **Exhibit R -16**.

The Registered Breeder vide its letter dated 8th February, 2012 informed this Authority that the additional information called for by PPVFRA had to be obtained from United States of America and as such, the same took some time. The copy of letter dated 8th February, 2012 is annexed at Page 35 of the Opposition and marked and exhibited here as **Exhibit R-17**.

Subsequently, Registered Breeder submitted a revised application dated 16th February, 2012 for registration of FL 2027. The Registered Breeder being an assignee of the rights to FL 2027 filed Form PV-2 as per the requirements stated under the PPV&FR Act, 2001 and PPV&FR Rules, 2003. However, in the said application, it was again inadvertently stated that FL 2027 was sought to be registered as New Variety. Upon immediately identifying the error, Registered Breeder's representatives rectified the error and made the requisite changes in the application dated 16th February, 2012 by



hand. The same was taken on record and is available with the Registry of this Hon'ble Authority.

The letter dated 9th June, 2011 from the Registrar of the Authority sought that the 'Registration Applicant' be referred to as an assignee. Registered Breeder duly complied with the same. The letter further stated that the deed of assignment between the Registered Breeder and the Company should be provided to PPVFRA. The deed of assignment (as per US Laws) between Dr. Robert W. Hoopes and FLNA (then Recot Inc) was submitted to PPVFRA. Additionally, Registered Breeder was also instructed to submit a duly signed Form PV-2. Registered Breeder claims that the Form PV-2 was duly submitted by Registered Breeder. At Annexure B to Form PV-2 which is the deed of assignment evidencing the assignment of FL 2027 to FLNA, has signatures of Robert W. Hoopes. It is also claimed by Registered Breeder that the Registrar-General of PPVFRA upon receipt and scrutiny of this document has appended his stamp on Form PV-2 after being satisfied that the Registered Breeder had substantially complied with the requirements for registration of FL 2027. Copy of Form PV-1 and Form PV-2 are annexed to the Reply at page 14-47 and marked and exhibited as **Exhibit R-18**.

The PPVFRA vide its letter dated 14th June, 2012 informed Registered Breeder that the Plant Variety FL 2027 was being considered for registration as an Extant Variety instead of a New Variety. Copy of letter dated 14th June, 2012 issued by PPVFRA is annexed at Page 36 of the Opposition and is marked and exhibited as **Exhibit R-19**.



Thereafter, the PPVFRA being satisfied of the documents submitted by Registered Breeder appended its signatures to the documents submitted to the PPVFRA and granted registration to FL 2027 as an Extant Variety for a period of six years from the date of registration by way of the Certificate of Registration dated 1st February, 2016. On such registration of FL 2027 as an Extant Variety, Registered Breeder was granted the exclusive right to produce, sell, market, distribute, import and export FL 2027 under Section 28 of PPVFR Act, 2001.

The Civil Suits initiated by Registered Breeder are not relevant to the present proceedings. Registered Breeder filed Civil Suits in Gujarat under Section 65 of the PPV&FR Act, 2001 against certain individuals who were illegally dealing in Registered Breeder's Registered Variety FL 2027 and also sought a permanent injunction to restrain infringement and passing off of Registered Breeder's Registered variety FL 2027 and brand name FC 5 respectively. These Civil Suits against such individuals were withdrawn by Registered Breeder based on its discussions with the government to find a long term and an amicable solution of issues around its seed protection. Therefore the said Civil Suits are not relevant to the present proceedings. The copy of the order dated 10th May, 2019 of the City Civil Court at Ahemedabad in C.S. Comm. No.24, 25, 26 are marked and exhibited here as **Exhibit R-20-22**.

Registered Breeder has incurred substantial costs towards production, sale, distribution and other aspects of its registered varieties, including FL 2027 to the tune of INR 93.09 Crores (2013-2017). The copy of the Chartered Accountant's certificate dated 28th



February, 2018 verifying the costs incurred by Registered Breeder towards production, sale, distribution and other aspects of the Registered Variety is annexed to the Opposition at Page 48 and marked and exhibited here as **Exhibit R-23**.

The registration of FL 2027 under the PPV&FR Act, 2001 was publicized periodically after grant of registration of FL 2027. The copy of newspaper publications issued by Registered Breeder in respect of its registered variety from time to time is annexed at Pages 39-47 is marked and exhibited as **Exhibit R-24** and **Exhibit R-25**.

The Registered Breeder works with thousands of local farmers to grow specific protected variety of potatoes for it, including FL 2027. Registered Breeder as of 2017-2018 has a total of 14000 (approx) collaborative farmers in India. As a company, Registered Breeder has been the largest process grade potato buyer and amongst the first companies to collaborate with farmers. The Registered Breeder's collaborative potato farming program is best in class and is built on strong backward and forward linkages that improve livelihoods by using protected seeds. Registered Breeder duly provides the agreements entered by individual farmers who are a part of the collaborative farming program. The copy of the affidavits submitted by farmers stating that they have access to the agreements entered between such individual farmers and Registered Breeder is annexed at Page 30-47 of the Sur-Rejoinder and exhibited and marked here as **Exhibit R-26** and **Exhibit R-27**.

The Registered Breeder had initiated the suits for countering the infringement of its registered variety in complete accordance with the provisions of the PPV&FR Act and was based on the FAQs



issued by PPVFRA's website at <http://www.plantauthority.gov.in/faq's.htm>. However, the Registered Breeder has not taken note of fact that the referred FAQs have been since removed from the website of the PPVFRA and subsequently the corrected revised version that includes the revised contents of the mentioned points under reference in this matter has been uploaded. The relevant FAQ, now totally irrelevant, is annexed at page 50-80 of the opposition and marked and exhibited here as **Exhibit R-28**. The true copy of weblink cache for <http://www.plantauthority.gov.in/faq'shtm> dated 23rd March, 2019 evidencing that the FAQs were uploaded on the PPVFRA website is exhibited and marked here as **Exhibit R-29**. The true copy of weblink cache for <http://www.plantauthority.gov.in/faq's.htm> dated 4th June, 2020 evidencing that the FAQs were removed from the PPVFRA website is exhibited and marked as **Exhibit - R-30**.

Accordingly the Revocation Application may be dismissed.

ANALYSIS: -

FACTS: -

The Registered Breeder filed the application for registration of their potato (*Solanum tuberosum* L) variety with denomination FL 2027 under the category of new variety on 18th February, 2011 with ACK No. REG/2011/151.

The Registrar after preliminary examination of the said application along with other queries observed that since, Dr. Robert W. Hoopes, Potato Breeder of Frito-Lay Agricultural



Research is shown to be the breeder in Serial No. 7 of the Application Form, an assignment deed between Dr. Robert W. Hoopes and the Registered Breeder (the applicant then) should have been duly submitted. Accordingly, Registrar on 9th June, 2011 vide letter No. PPV&FRA/Registrar/24-1/2011/393, directed the Registered Breeder (the applicant then) to submit the assignment deed between Dr. Robert W. Hoopes and the Registered Breeder (the applicant then) along with PV-2 duly signed by the Breeder and countersigned by the Registered Breeder (the Applicant then). The said letter of the Registrar communicating his observations to the Registered Breeder (the Applicant then) for furnishing information within one month in prescribed format for further processing of applications is extracted hereunder:-

"The M/s. Pepsico India Holding Pvt. Ltd., Gurgaon has filed an application on 18.02.2011 to the PPV&FR Authority for registration of Potato crop denomination FL 2027 under New Variety. This application is under examination and following additional informations are required:-

1. *In Column No.1 of application: The identity of applicant will be Assignee of any of the above and not institutional. Please correct.*
2. *Provide PV-1 form stamped as per Indian Stamp Act.*
3. *Provide PV-2 duly signed by the concerned breeders whose names are mentioned in column No.7 of the application form-1. PV-2 should be countersigned by the Applicant" in the application form for registration.*
4. *Provide a copy of deed of assignment between the breeder and the company.*
5. *Provide GURT affidavit on non-judicial stamp paper and duly notarized.*
6. *Provide the declaration under Section 18(1)(h) of PPV&FR Act, 2001.*
7. *Provide the source of parental material from where these were acquired.*



8. Has the candidate variety been exploited for development of hybrids/varieties? If yes, then please provide the details and provide the date of first sale of the first hybrid developed by using the candidate variety as one of the parents. Also provide document (copy of sale invoice) indicating the date of the first sale and an affidavit for the same.
9. Data of all DUS characteristics have not been provided in the application. If available provides DUS data of all characteristics as per DUS test guidelines.
10. The candidate variety is new or extant, as per the Section 15(3)(a) of the Act, 2001. Please clarify.
11. Provide good photographs of the specific distinct traits claimed for the candidate variety and others specification notified in the Plant Variety Journal of India.
12. Every page of the application form should be signed at the bottom of the page by the applicant/assignee to be made/breeder.
13. Kindly submit checklist along with application from provides detail of enclosures.
14. In Column No.8(a)(i) of the Technical Questionnaire: Provide Grouping character according to the specific DUS test guidelines.
15. In Column No.8(b) of the Technical Questionnaire: Provide the Table of characteristic comparison according to the specific DUS test guidelines.
16. In Column No.9 of the Technical Questionnaire: Provide distinguishing characteristics of the reference variety used for comparison with candidate variety.
17. In Column No.10 of the Technical Questionnaire: Provide statement of distinguishing characteristics of the candidate variety in tabular form comprising with reference variety along with state & note value as per the PPV&FRA specific DUS test guideline.
18. Provide two additional sets of application filed in the Authority.

Accordingly, you are requested to furnish the above cited information within one month on prescribed formats as per PPV&FR Act, for further processing of your application.

Sd/-

Registrar"



The Registered Breeder (the applicant then) vide its letter dated 8th February, 2012 informed the Registry that the

additional information called for was required to be obtained from United States of America and as such, they needed some additional time. Further, Registered Breeder informed this Registry there was another correction which was required where, the Registered Breeder had to apply for registration under the Extant Variety Category instead of New Variety Category. The Registered Breeder also informed that for applying under the New Variety category, it had deposited Rs.10,000/- whereas for applying under Extant Variety Category the applicable fee was only Rs.5000/- as such Registered Breeder requested the Registrar to consider the change of category for registration of FL 2027 and to suggest the way forward for adjustment/ refund of the additional amount deposited by the Registered Breeder.

Despite, the said admission by the Registered Breeder (the applicant then) that the potato variety FL 2027 qualifies for registration under the Extant Variety Category, still the Registered Breeder (the applicant then) on 16th February, 2012 filed the revised application form for registration of FL 2027 again under the category of 'New Variety'. This application dated 16th February, 2012 was accepted and advertised by the Registrar and the said application form which proceeded for registration is hereinafter referred to as "Application"

In Serial No.1 of the application, the Registered Breeder (the applicant then) marked themselves as "Assignee of any of above" with regard to identity of applicant. This proves beyond doubt that a legally valid assignment deed is mandatory as the Registered Breeder (the applicant then) has filed the application



as assignee of the breeder, not being the breeder of the variety himself.

At Sl. No.2 (a) and (b) of the said Application, relating to Name and Nationality of Applicant(s) (if legal person) the Registered Breeder has filled their name as follows: -

"2. Name(s) and Nationality of Applicant(s) NA

2. (a) (If natural person): [Insert additional rows, if required]

2. (b) (If a legal person; for example a firm or company or institution): Name: Pepsico India Holding Pvt. Ltd., "

If the applicant for registration of a plant variety (at Sl. No.2 of the application-Form-I) is different from the breeder of a plant variety (Sl. No.7 of the application- Form 1), then mandatorily an assignment deed from the breeder of the candidate variety to the applicant as an assignee of the breeder or is required along with PV-2 enclosing the said assignment deed under Section 18(3) of PPV&FR Act, 2001. It is also well settled that the assignee of an assignee is also an assignee where the assignment in favour of the first assignee becomes integral to enable him to be the assignor of the second assignee, so that the status of first assignor transcends to the second assignee for any validity of a claim on the subject matter being assigned to the second assignee. Dr. Robert Hoopes, breeder of FL 2027, Recot Inc, subsequently changed to FLNA, the Registered Breeder are different, then mandatorily assignment deed is required from the said first assignee (Recot Inc., subsequently changed to FLNA). In the instant case, the only the assignment deed between Breeder (Dr. Robert W Hoopes) to Recot Inc., (subsequently



name changed to FLNA) has been submitted, which is not stamped in accordance with Indian Stamp Act and without the signature of witnesses. The assignment deed between FLNA, USA to the Registered Breeder (the applicant then) has not been submitted, which is the main issue in this case.

At Sl. No.2(c) of the Application, relating to natural person representing the legal person, the name of Sh. Rajiv Wakhle, Operation Director of Registered Breeder has been filled and the same is extracted hereunder:-

"2(c) Indicate the name and address of the natural person, being an employee of the legal person, who is duly authorized to represent the legal person (example a director of a company or a partner of a firm):

Name: Rajiv Wakhle

Designation: Operation Director

Address: Pepsico India Holdings Pvt. Ltd.,

(Frito-Lay Division)

Global Business Park, Tower-A, 4th Floor,

Mehrauli-Gurgaon Road, Gurgaon-122002,

Haryana

Telephone: 0124-4153200

Fax:0124-2803165

E-mail: rajiv.wakhle@pepsico.com"

In Sl. No.5 of the Application, with regard to the type of variety the Registered Breeder (the applicant then) has marked it as New Variety. The Registered Breeder has falsely stated in their PV-16 (Notice of Opposition to oppose the Revocation) that their representatives have corrected by hand the application to Extant Variety instead of New Variety.



The relevant portion from PV-16 is extracted hereunder: -

"However, in the said application, it was again inadvertently stated that FL 2027 was sought to be registered as new variety. Upon immediately identifying the error, PIH's representative(s) rectified the error and made the requisite changes in the application dated February 16, 2012 by hand." (Para 12 Page 4-5 of PV-16 - Notice of Opposition to oppose the Revocation).

From the file at the Registry and evidence submitted by Registered Breeder, there is no such visible correction of typographical error made by hand on the said revised application form. It is only on form PV-1 nominating an authorized person on behalf of Registered Breeder to receive all communication by the Registry on the application related matters that the Registered Breeder refers to the application as application for registration of potato extant variety FL 2027. The next mention in document comes from Registrar who informs the Registered Breeder on 14.06.2012 that the variety has been filed as "extant variety".

There are contradictions in the date of first sale though all the available dates provided by the Registered Breeder enable the registration for protection of the variety only under the category of Extant Variety, which cannot be claimed as a New variety since it lacks the novelty which would be intact only if the candidate variety has not been exploited or sold within the 12 months period before filing the application for registration anywhere. . While there is no option under Section 15(3)(a) of the PPV&FR Act, 2001 other than being eligible to be protected only under the category of extant variety about which variety



there is a common knowledge the onus squarely is with the Registered Breeder (the applicant then) to have furnished one unambiguous date of first sale. In the Application, FL 2027 is described as New Variety, being so, the Registrar without directing the Registered Breeder (the applicant then) to amend the category to Extant Variety under Section 20(2)(a) of PPV&FR Act, 2001, collected registration/ DUS test fees as New Variety, only to adjust the fee for testing to that of Extant Variety after the revised application was submitted. The Application under "New Variety" category that is now being claimed as being inadvertent and also to have been corrected by the representatives of Registered Breeder which has not been done so. There is no such possibility for anyone other than authorized person to effect any such change that too with the approval and consent of the Registrar with due formal request for the same. Why the Registry does not have the document evidencing the change of category from New to Extant by Registered Breeder (then applicant) after the revised application was filed on 16th February, 2012 is an action by the Registry that is not in conformity to the protocols and judicial proceedings, which each such action is as per Section 87 of the PPV&FR Act.. The Registrar without directing the Registered Breeder (the applicant then) to amend the category from New to Extant or the Registered Breeder (the applicant then) without getting amended the same conducted one year's DUS test as relevant in the case of an extant variety. Further it was advertised as extant variety in the Plant Variety Journal Volume No.09 No.04 on 1st April, 2015 before issuing the certificate under Extant Variety Category. The



Registrar has been negligent in following the protocols as per the Rules stipulated for registration of an extant plant variety.

Now coming to Sl. No.7 of the Application, relating to Names and addresses of Breeders who has/have bred the candidate variety the Registered Breeder (applicant then) has mentioned the name of Dr. Robert W. Hoopes and the same is extracted as follows:-

"7. Names and Addresses of Breeder(s) who has/ have bred the Candidate Variety:

Name: Robert W. Hoopes

Designation: Potato Breeder

Address: Frito-Lay Agricultural Research, 4295

Tenderfoot Road, Rhinelander, WI 54501

Telephone: (715) 365-1603

Fax: (715) 365-1620

E-mail: Robert.hoopes@fritolay.com"

Dr. Robert W. Hoopes, Potato Breeder of Frito-lay Agricultural Research is shown to be the breeder in Serial No.7 of the Application Form. An assignment deed between Dr. Robert W. Hoopes and the Registered Breeder (the applicant then) or between assignee of Dr. Robert W. Hoopes and Registered Breeder should have been duly submitted but the same was not done. Only the assignment deed between Dr. Robert W. Hoopes and Recot Inc (subsequently name changed to FLNA) was enclosed. That too, unstamped and on white paper without signature of any witnesses, who could have proved it was indeed Dr Hoopes who assigned the rights on potato variety FL 2027 to



Recot Inc (Subsequently name changed to FLNA). The signature of assignor or plant variety holder or breeder was missing in the PV-2. Subsequent assignment deed between FLNA to Registered Breeder was not enclosed. The Registered Breeder (the applicant then) nowhere stated in the application or at any stage before the application was accepted, that there was an oral assignment between Recot Inc., (subsequently name changed to FLNA) to Registered Breeder. It is only a purported claim that is neither recorded nor can be proved without any ambiguity now. It is assumption at best between two persons (FLNA and Registered Breeder) being claimed by Registered Breeder. The plea of oral assignment was first raised in the instant Revocation proceedings at para 13 page 5 of PV-16 (Notice of Opposition to oppose the Revocation) and is totally irrelevant.

At Sl. No. 9 of the application, relating to the commercialization or exploitation of the candidate variety (variety which is applied for registration) the Registered Breeder (the applicant then) has mentioned that it has been commercialized and the date of first sale of FL 2027 variety is 17th December, 2009 and the same is extracted as follows:-

“9. Has the candidate variety been commercialized or otherwise exploited ?

If yes, please indicate the following: Yes No

Date of the first sale of the variety: 17th December, 2009”



Sl. No.9 of the application is crucial to determine whether the variety is new or extant or even ineligible variety that is considered to be in public domain. During the process

of this analysis as proceedings of the Revocation Application, it is discovered that the Registered Breeder in the Application for Plant Variety Protection Certificate filed in US with PVPO Number 200300274 has mentioned that potato variety FL 2027 was sold to Chile, South America on October 28, 2002.

The relevant portion is extracted hereunder:-

"Sl. No.22 of Application filed in USA.

Has the variety (including any harvested material) or a hybrid produced from this variety been sold, disposed or, transferred or used in the US or other countries?

Yes / No

If yes, you must provide the date of first sale, disposition, transfer or use for each country and circumstances (please use space indicated on the reverse)

Continued from Front (Please provide the date of first sale, disposition, transfer, or use for each country and the circumstances, if the variety including any harvested material) or a hybrid produced from this variety has been sold, disposed of, transferred, or used in the US or other countries)

Mini tubers of FL 2027 were sold to Chile, South America October, 28, 2002"

Thus, it is clear that the FLNA in its application mentioned the date of first sale as 28th October, 2002 in the USPVPO Application No.200300274. The said USPVPO Application No.200300274 has been enclosed by Registered Breeder along with the application filed in this Registry for registration of FL 2027 with PPVFRA, India. But in Sl. No.9 of the Application, the Registered Breeder (the applicant then) has mentioned that the date of the first sale of the variety was 17th December, 2009 ignoring the available information of the variety



being in sale already in 2002, seven years prior to claimed date of first sale. There cannot be more than one date of first sale. It is noted here that there are three dates of first sale in the documents available with the Registry. In the invoice enclosed by Registered Breeder as proof of the first sale of FL 2027, the date is 18th December, 2009. In the USPVPO No.200300274 the date of first sale of FL 2027 is 28th October, 2002. But the date filed in the relevant column in the application to PPVFRA is 17th December, 2009 making it a third date of first sale of the variety FL 2027. An unambiguous and uniform first date of sale in respect of FL 2027 ought to have been furnished by the Registered Breeder (the applicant then). Furnishing incorrect date of first sale and obtaining registration amounts to hiding correct qualifying data which is equivalent to furnishing incorrect information by the Registered Breeder (the applicant then). The Registered Breeder being a corporate entity has the requisite infrastructure to provide legitimately correct information and could have cleared the contradictions in the date of first sale by amending the application at any point of time. Neither the Registered Breeder did it on his own Nor the Registrar discovered it while examining the application and failed to direct the Registered Breeder (applicant then) to amend the application relating to date of first sale under Section 20(2)(a) of PPV&FR Act, 2001. Neither the Registrar directed the Registered Breeder to amend the application based on evidence submitted nor the Registered Breeder amended the application by themselves for correcting single first date of sale everywhere. The Registrar treated the date of first sale as 17th December, 2009 on his own ignoring the



information in the evidences submitted, and advertised the same in Plant Variety Journal of India Vol. 9 No.4, dated 1st April, 2015. In pursuance of which, the certificate of registration was issued and which is now the subject matter of this Revocation Application. The Registered Breeder has obtained the Registration on incorrect or ambiguous information submitted with regard to the date of first sale of the FL 2027 variety.

It is to be noted that, the provisions under PPVFRA for different categories of varieties other than farmers' varieties is as follows:

As per Section 15(3)(a) of the PPV&FR Act, 2001, the variety is new if it is had not been exploited or commercialized in India for a period of one year on the date of filing of application,. In case of outside India, it is four years for field crops and six years in case of trees and vines. Since the period of protection of Plant Breeder's right on a variety is only for 15 years after registration in India, only those varieties which have been exploited or commercially sold not beyond 15 years from the date of submission of a complete application along with seed, fee and documents related to Form 1 of the Application are eligible for registration under Rule 22(2A) of PPV&FR Rules, 2003. If such date happens to be before the cut-off date prior to 15 years prior to the date of submission of the complete application in India, then the variety would be ineligible for protection in India and the variety would be considered under public domain in India (Rule 22(2A) of



PPV&FR Rules, 2003). That is, if the date of first sale on record as 1 January, 1996 instead of the currently discovered date of October 28, 2002 when the variety was sold in Chile, South America it would amount to the applicant trying to register a variety that is fit to be considered as public domain variety.

Considering the provisions as per PPVFR Act (2001) related to the date of first sale or exploitation information of a candidate variety (other than farmer's traditional variety) for registration, incorrect information can have extremely divergent outcomes ranging from different category status of the variety to its being ineligible for protection.

As stated earlier, in the application, the Registered Breeder (the applicant then) has described themselves as Assignee. In case of assignee of Plant Breeders, PV-2 has to be filed along with the document showing the proof of right to file the application under Section 18(3) of PPV&FR Act, 2001 read with Rule 27(2) of PPV&FR Rules, 2003. It is needless to say that filing of PV-2 along with the assignment deed is mandatory in cases of assignee applicants as that of Registered Breeder. In the instant case, in the PV-2 (Proof of Right to Make Application) dated 16th February, 2012 filed by the Registered Breeder along with the application, the name of the Dr. Robert W. Hoopes (the Breeder) is mentioned in the PV-2 but signature is presumed to be made by Mr. Rajiv Wakhle (as it is not mentioned below the illegible signature, the name of the signatory which is a necessary requirement for any legal proceedings to identify the person



signing). Considering the letter "R" legible, the signatory being expected to be the one who is identifying himself as "I, Dr Robert W. Hoopes....." (in PV-2), it could be taken as Dr Hoopes is the signatory but it is not so. Since, witnesses' are missing which was also essential, there is no inbuilt verification as expected in the document. Seen in isolation by an unassuming Registrar who is not expected to recognize the signatory by signature, could have presumed it as signature of Dr Robert Hoopes. Only if he suspected and sought to verify from the other documents, he would know it is the signature of Dr Rajiv Wakhle, who has signed without identifying his own identity on the particular document for Dr. Hoopes and not Dr. Hoopes himself. The assignment deed enclosed along with the PV-2 is between Dr. Robert W. Hoopes (the Breeder) and Recot Inc, (assignee- the name subsequently changed to FLNA) that too, which is neither stamped under Indian Stamps Act, nor signatory is identified at the bottom of the signature nor endorsed by witnesses. Further, the documents evidencing the change of name of Recot Inc to FLNA has been submitted only in the instant revocation proceeding. Dr. Robert W. Hoopes (Breeder) assigned it to Assignee (Recot Inc) on an unstamped paper under Indian Stamp Act. There is no document evidencing the assignment from Recot Inc. or FLNA, to the Registered Breeder. Under Section 35 of Indian Stamp Act, an unstamped document is inadmissible in evidence. On contrary, the Registered Breeder has mentioned that there was an oral assignment between FLNA to Registered Breeder though there is no such information provided, irrespective of the fact of its being illegitimate or not to



accept "oral" assignment. Needless to note, the application got proceeded to DUS testing and subsequent registration in 2016, with one year testing.

The PV-2 filed along with the application is extracted and the same is as follows:-

"I Dr. Robert W. Hoopes (Nationality-American), Senior Scientist, Breeder, residing at Frito-lay Agricultural Research, 4295, Tenderfoot Road, Rhineland, Wisconsin 54501, United States of America referred to in this application as claiming to the breeder or variety right holder hereby declare that the applicant(s) who has/have signed this application is/are my/our assignee(s) or successor(s).

I/We hereby enclose herewith the following documents as required under Rule 27(2):-

1.
2.
3.

I/We hereby declare that the information given above is true and correct to best of my/our knowledge and belief

Dated:

Signature

Signature of two witnesses along with their names and address:

- 1.....
2.

Note: - Document supporting PV-2 is enclosed. Copy of ASSIGNMENT (Annexure-B).

I/We also hereby declare that the information given above are true to the best of my/our knowledge and belief.



Signature*

Dated: 16/02/2012

Seal Pepsico India Holdings Pvt. Ltd.,"

**Illegible other than the first alphabet R*

Thus, it may be seen that though Dr. Robert W Hoopes has been named in the PV-2, Dr Hoopes signature is not present in the PV-2. That actually means, there is no assignment deed filed at all by the assigned applicant that is Registered Breeder herein. In the instant case, PV-2 has been signed only by the Registered Breeder (the applicant then) and not by the breeder or the plant variety right holder. Registered Breeder who is not required to sign the document as there is no space provided for signature on PV-2 for applicant to sign at all. It is only the signature of assignor who names the assignee-applicant, and the signatures of the two witnesses who have to be obviously other than either assignor or assignee. What was expected was the signature of Recot Inc or FLNA (original assignee of the variety duly assigned by the assignor Dr R. W. Hoopes) as the assignor assigning FL 2027 to the Registered Breeder as the assignee. In the instant case the assignment is non-existent since the one who is assigning is not signing the document and Registered Breeder who signs it without mentioning himself as assignee or breeder, that too in continuation of the statement that starts with "I, Dr Robert W Hoopes....." under the seal of Registered Breeder, the signature of the witnesses is also missing in PV-2. No person would sign with his own signature where the signature actually required is of the other person who is making a declaration. While Registered Breeder committed the mistake by wrongly filling PV-2, the Registrar did a greater mistake by not scrutinizing it and accepting an "unsigned" document as an "assignment deed". Had the Registrar been serious, the



document would not have got accepted as submitted and the Registrar would either have rejected the application or if he was convinced of no intentional wrong doing or an exercise that needed more time, could have directed the Registered Breeder (the applicant then) to that effect and got the valid document to proceed further. This is a fatal flaw as the Registered Breeder claiming to be an assignee of the assignee (FLNA-previously Recot Inc) of a breeder (Robert W Hoopes) is bound to have submitted an assignment deed between FLNA and Registered Breeder along with PV-2. But this has not been done. The instant PV-2 filed along with the application, should not have been taken on record due to absence of signature of assignor and witnesses. In all seriousness it may be case of an unsuspecting Registrar who took the document on its face value without verifying its purpose and status, or trusted in good faith the authenticity of a document being submitted by an organized corporate structured MNC to be legally correct and thereby subjected the procedure to a mere informal documentary gathering activity and displaying negligent attitude of cursory nature while accepting the document and eventually defeating the purpose of the documentation itself.

I fail to understand how Registrar could accept this blank and empty PV-2 signed only by the Registered Breeder (the applicant then) that too without compliance to Registrar's query in this regard vide letter dated 2nd/ 9th June, 2011. The assignment from Recot Inc (subsequently name changed to FLNA) to the Registered Breeder (applicant then) has not been annexed. To counter this, that is the non-submission of



assignment deed between FLNA (previously Recot Inc.,) to Registered Breeder the plea of oral assignment has been set up in the instant proceedings.

Thus, the PV-2 filed in this instant matter by Registered Breeder is *non-est* in the eye of law. Since, PV-2 is invalid the application based on the PV-2 also becomes invalid.

Even the enclosure of assignment deed in PV-2 relates to assignment of FL 2027 from Dr. Robert W. Hoopes (Breeder) to Recot Inc (Assignee) not stamped in accordance with law, the Registered Breeder sets the plea of oral assignment of FL 2027 from FLNA (Previously Recot Inc) to Registered Breeder. It is an admitted fact by the Registered Breeder that there is no assignment deed between FLNA to Registered Breeder. .

The Registered Breeder (the applicant then) never being the breeder/assignee of the variety FL 2027 filed an application without an assignment from assignee FLNA, an omission that escaped the scrutiny of the Registrar and the application was taken as complete by the Registrar, a major procedural shortcoming in the case. Having registered their varieties globally, and having legal advisory in a formal methodological sequence of functioning or investment in a corporate structure in the country, FLNA or Pepsico Inc. USA., or Registered Breeder would definitely be aware of the fact that the applicant for registration had no authorization to file for protection of the variety FL 2027 especially after being directed by the Registrar to complete the Form PV-2. Being the claimant for registration of its ownership right, the Registered Breeder is guilty to have come



forward to submit a deficient document even without signatures required being fully aware of the action that was equal to taking a chance to slip an erroneous document without signature and seal of the assignor as well as the required two witnesses to somehow complete the formality of required documents for completion of application to comply the deadline set by the Registry. The Registered Breeder was fully aware that he never had documents to prove that he was the assignee of the plant breeder as required in Form PV-2, in this case, from FLNA who was assigned the right on the variety FL 2027 by its breeder Dr Robert W Hoopes. Even then, without getting the document scrutinized, the Registrar, conducted DUS test of FL 2027 in 2012 at CPRS, Jalandhar and CPRIC, Modipuram for one year as carried out in the case of an Extant Variety with common knowledge and accepted the said application under Section 20 of PPV&FR Act, 2001 and advertised for registration under Section 21 of PPV&FR Act, 2001 in Plant Variety Journal of India Vol. 09-No.04, April 01, 2015. The said variety was advertised as the Extant Variety of common knowledge with the date of first sale being 17th December, 2009 (despite anomalies in date of first sale of FL 2027 in application, application submitted in USPVPO and invoice submitted in proof of date of the first sale of FL 2027). Thereafter the Registrar proceeded with the task of granting registration and issued the certificate of registration dated 1st February, 2016 in favour of Registered Breeder in respect of FL 2027 in utter disregard of law.

During the pendency of the instant revocation proceedings, through PV-16 (opposition to the revocation



application) for the first time the Registered Breeder filed two documents namely a copy of the certificate of incorporation evidencing the change of name of Recot Inc., (assignee of Dr. Robert W Hoopes, Breeder) to FLNA and letter dated 12th September, 2019 issued by FLNA. In the said letter dated 12th September, 2019, it has been stated by in opposition to the revocation application, that FLNA allowed the Registered Breeder to file the application for registration of FL 2027 under the PPV&FR Act, 2001 for which registration was granted vide Certificate of Registration No.59 of 2016 dated 1st February, 2016. For the first time in the Reply filed in the instant Revocation Proceedings the Registered Breeder took up the plea of oral assignment from FLNA to Registered Breeder. This clearly shows that the case of oral assignment between FLNA to Registered Breeder in the instant proceedings is an obvious after-thought to attempt to legitimize absence of a document as acceptable omission. The Registered Breeder could have taken up the plea of oral assignment in his response to the Registrar's letter dated 2nd /9th June, 2011 but it was not done so. Again, subsequently also, nothing prevented Registered Breeder from seeking more time if such a time was required or even informing about the so called "oral assignment" now being claimed after nearly nine years after filing the application, to the Registrar. This was never felt as a necessity by the Registered Breeder till he was challenged by the Revocation Applicant's application for revocation of the registration of the said variety of potato.



ISSUES:-

Based on the meticulous consideration of pleadings, documents filed and arguments of the parties, I frame the following issues:-

- a) Is the Revocation Applicant the 'person interested' within the meaning of Section 34 of the PPV&FR Act, 2001?

The Revocation Applicant in this case states that she is a public spirited citizen working on sustainable farm livelihoods and concerned about the public interest impacts of the registered plant variety. Further one of the grounds available for Revocation in Section 34(h) also provides that the certificate of registration could be revoked if its grant is not in the public interest. This makes it clear that a person having 'public interest' in relation to revocation of a registered variety could also safely come within the meaning of 'person interested' under Section 34 of PPV&FR Act, 2001 if he has a basis to showcase that the grant of registration of Plant Breeder's right itself is not in the public interest, here, potato cultivating farmers at large. Thus, public spirited citizens in the public interest and for the welfare of the farmers must also be treated as "person interested" within the meaning of Section 34 of the Act, even when he himself is not directly being affected by such a registration. The Revocation Applicant also states that the Registered Breeder has harassed farmers



causing unreasonable stress of that may lead to their financial devastation, by filing infringement suits seeking compensation from each of the nine farmers of the value in Indian currency, the kind of which could never be the earnings by selling seed potato of the variety FL 2027 cumulatively over all the years by each of the charged farmers. The harassment and the potential stress of the concerned farmers do fall within the work objective of the Revocation Applicant. *Prima facie* the contention that the filing of infringement suits that would likely subject a set of farmers to harassment and deprivation of large sums of money itself suffices to hold the Revocation Applicant as a 'person interested' within meaning of Section 34 of the Act. The PPV&FR Act, 2001 is meant for the welfare of farmers and even an iota of allegation relating to harassment by farmers have to be examined in detail and of course if the allegations are false the Revocation Applicant could be burdened with heavy costs under proviso to Rule 22 A of PPV&FR Rules, 2003 and hence no prejudice would be caused to the Registered Breeder.

The Registered Breeder repeatedly points out that Revocation Applicant cannot question the *inter se* assignment between group of companies. Irrespective of the issue whether anyone can question inter-se assignment matters within a group of companies, what is being questioned by the Revocation Applicant is the



absence of assignment required as per PV-2, and not the *inter se* assignment.

If a Revocation Applicant alleges farmers interests have been prejudiced or may be prejudiced then the Revocation Application has to be examined and in such a case, the Revocation Applicant is a 'person interested' within the meaning of Section 34 of the Act. If the allegations are false as reiterated heavy costs can be imposed on the Revocation Applicant. Hence, as regards the first issue, I have no hesitation to hold that the Revocation Applicant is 'person interested' within meaning of Section 34 of PPV&FR Act, 2001.

b) Whether Dr. Robert W. Hoopes is the breeder of registered variety FL 2027? If so, whether Dr. Robert W. Hoopes assigned it to Assignee (Recot Inc.,)?

Section 2 (c) of PPV&FR Act, 2001 defines breeder as follows: -

"Breeder means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety"

The Registered Breeder has mentioned in the application Dr. Robert W Hoopes, Senior Scientist, Plant Breeder, Frito-Lay Agricultural Research is the breeder of the FL 2027 potato variety. This is an admitted fact and there is no dispute regarding this. The Registered Breeder (applicant then) along with PV-



2 filed with the application has also submitted an assignment deed dated 26th September, 2003 showing that FL 2027 has been assigned by Robert W. Hoopes to Recot Inc., at a consideration of One US Dollar. Of course, as pointed out by Revocation Applicant the words "2027" has been written in hand in pen without required acknowledgement of the correction made by the original signatory, and copy of the same has been filed in the Registry duly attested by Sh. Rajiv Wakhle, Operations Director of the Registered Breeder, (the applicant then) Hence, there is no doubt that Dr. Robert W. Hoopes is the Breeder of FL 2027 and he has assigned it to Recot Inc. The assignment deed dated 26th September, 2003 filed along with the PV-2 also supports this but the same cannot be taken on record as it is unstamped. Under Section 35 of the Indian Stamp Act, 1899, an unstamped document could not be relied on for purpose of evidence or registration. Accordingly, I hold that the assignment deed dated 26th September, 2003 between Dr. Robert W. Hoopes (breeder of FL 2027) and Recot Inc., (subsequently name changed to FLNA) is inadmissible as otherwise also it is not only stamp paper, it is neither on company's official letter head identifying the assignor, nor it is endorsed by any witnesses, as required to prove that indeed Dr Robert W. Hoopes is the signatory of the document. These are too many omissions to even consider the document as any valid document of evidence in principle.



c) Whether Recot Inc., (assignee of FL 2027 from Breeder) has changed its name to FLNA?

There is no document in the application to show that Recot Inc has changed its name to FLNA. In fact, in the application, it is clear that Dr. Robert W. Hoopes is the breeder who has assigned it to Recot Inc. The change of name of Recot Inc., to FLNA has neither been informed to the Registry by the Registered Breeder nor the Registrar sought to obtain clarification from the Registered Breeder (applicant then) to clarify and correct it. Only as part of the submissions in the PV-16 filed in the instant Revocation Application, the Registered Breeder submits a certificate of incorporation dated 11.11.2004 evidencing the change of name of Recot Inc to Frito-Lay North America Inc. The Registered Breeder as applicant for registration of the variety as well as the Registrar are guilty of this oversight of not fulfilling crucial documents required when one has claimed to be the right holder on the ownership to deal with the commercial matters related to the variety's seeding material. I find it most unconvincing to believe an organized business conglomerate with more than a century of global IP protection related experiences made such omissions by oversight. The same document was neither submitted along with the Application nor even mentioned in the application. However, since owing to its lack of authenticity by not complying with Indian Stamp Act,



1899 the assignment deed dated 26th September, 2003 between Dr. Robert W. Hoopes (breeder of FL 2027) and Recot Inc. USA is not taken on record. I cannot now consider the document dated 11.11.2004 evidencing the change of name of Recot Inc., to FLNA as valid for record. Further the said document has been submitted in this Revocation proceeding only, and as such is not part of documents available on the application for the registration of FL 2027. If the same can be accepted now and can be used for defending the opposition, then the Registered Breeder automatically gets charged under Section 34 (c) of PPVFR Act (2001) of not having submitted documents as required for the registration. Accordingly, it is clear that Dr. Robert W. Hoopes has bred the FL 2027 and is the breeder of FL 2027. The fact that he has assigned it to Recot Inc., whose name has been subsequently changed to FLNA cannot be taken on record.

d) Whether there is an oral assignment of FL 2027 from FLNA to Registered Breeder (Applicant then) and if so, whether oral assignment between a breeder/assignee to assignee is valid in PPV&FR Act, 2001?

In view of the earlier conclusion, this issue need not be considered at all. However, in the interest of justice and for holistic analysis this issue is also considered. There is no validity and legal entitlement to any such "oral assignment" which cannot even be



supported by an eye-witness to endorse the same, that is purportedly to effect transfer of stakes on a property between any two parties in India, especially, when the concept of who is legitimate assignor and who is the legitimate assignee is itself in a state of confusion among Dr Robert W Hoopes, M/S Recot Inc. USA, (name subsequently changed to FLNA) and Registered Breeder as far as the application for registration of potato variety FL 2027 is concerned. It is an admitted fact, that there is no document or assignment deed showing the assignment of FL 2027 from Recot Inc., (name subsequently changed to FLNA) to Registered Breeder. The Registered Breeder took the plea of oral assignment of FL 2027 from FLNA to the Registered Breeder for the first time in the PV-16 filed in the Revocation Applicant. There is also an admission of the Registered Breeder in PV-16 that no document was submitted as an evidence for the assignment between FLNA as breeder or plant variety right holding assignor to Registered Breeder as assignee.

The relevant portion is extracted hereunder: -

“For the assignment of rights from FLNA to PIH, no document was submitted as FLNA had made an oral assignment of the right to register FL 2027 and allowed PIH to seek registration of the Plant Variety FL 2027 under the Act. The same is borne out from the contents of the letter dated September 12, 2019 issued by FLNA which is annexed at Annexure-3” (Page 5 Para 13 of PV-16 – Notice of Opposition to oppose Revocation)



At the outset, the plea of oral assignment is invalid under the PPV&FR Act, 2001. The Registered Breeder's plea of oral assignment between FLNA and Registered Breeder is a violation of the provisions under Section 18(3) of the PPV&FR Act, 2001 read with Rule 27(2) of PPV&FR Rules, 2003.

A combined reading of Section 18(3) read with Rule 27(2) of PPV&FR Rules, 2003 makes it clear that when an application is made by virtue of an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within a period of six months, documentary proof showing the right to make such an application and the documentary proof in case of an assignment shall be furnished in Form PV-2 as given in the First Schedule of PPV&FR Rules, 2003.

Section 18(3) of the Act is extracted hereunder:-

"Section 18(3)- Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application."

Rule 27(2) of PPV&FR Rules, 2003 is extracted hereunder:-



"27. Proof of the right of making application under sub-section (3) of Section 18.-(1) Where an application for registration is made by the successor or assignee of the breeder under sub-section (3) of section 18, he shall furnish documentary proof, at the time of making such application or within six months of making such an

application, as to the right to make such an application for registration.

(2) The documentary proof, in case of an assignment, shall be furnished in the manner specified in Form PV-2 given in the First Schedule and in case of succession, or a succession certificate or any other document in support of succession proving the applicant to be the successor shall be furnished."

The above provisions make it clear that assignee must submit documentary proof of assignment within six months of the date of making of application, and there can be no such alternative as an oral assignment claim. This documentary proof of assignment to file for registration of the said potato variety in the instant case has not been filed till registration. The application with this inadequacy was considered for registration of FL 2027 in favour of the Registered Breeder. This proves beyond doubt that registration of FL 2027 has been obtained by submitting an incorrect information of without required documents in favour of Registered Breeder who is not an authentic eligible person to apply for registration of plant variety protection under the Act. The Registered Breeder is neither the breeder nor the assignee of the registered variety FL 2027 registered in their favour. Accordingly, the plea of oral assignment between FLNA to Registered Breeder cannot be accepted.

e) Whether an assignment (letter dated 12th September, 2019 executed by FLNA) be executed subsequent to the



registration but with regard to oral assignment occurred prior to registration is valid in the law?

The Registered Breeder in the PV-16 filed in the Revocation Proceedings submitted a letter dated 12th September, 2019 from FLNA stating that they had allowed the Registered Breeder to obtain the registration of FL 2027. The content of the said letter is extracted hereunder: -

"FritoLay

To,
Date September 12, 2019

The Protection of Plant Variety and Farmers Rights Authority,

NASC Complex, DPS Marg,

Opp. Todapur Village,

New Delhi-110012

Subject: Clarification in relation to the Certificate of Registration No. 59 of 2016 and FORM 1

submitted by PepsiCo India Holdings Private Limited dated February 16, 2012

Sir,

We, Frito-Lay North America Inc. ('Frito-Lay') (formerly known as Recot Inc.), are writing to you to state the following-

- 1. PepsiCo India Holdings Private Limited ('PIH) and Frito-Lay North America, Inc. ('FLNA') are affiliates of PepsiCo, Inc.*
- 2. FLNA and its affiliated throughout the world work together to protect FLNA,s proprietary potato varieties with patents, Plants Breeders' Rights and, in the case of India,*



registration under the Protection of Plant Varieties and Farmers Rights Act, 2001 ('the PV Act').

3. FLNA allowed PIH to file the application for registration of FL 2027 under the PV Act, for the potato variety known as FL 2027 under the PV Act in India, vide application dated February 16, 2012 for which registration was granted vide Certificate of Registration No. 59 of 2016 dated February 1, 2016.

Please take note of the above-stated clarification(s) for your record and reference.

Sincerely,

Sd/-

Paul W. Schrier, Ph.D.

Assistant Secretary

Frito-Lay North America, Inc."

Section 18(3) of PPV&FR Act, 2001 and Rule 27(2) of PPV&FR Rules, 2003 makes it clear that an assignee must file proof of right to make application within six months of the making application. This makes the letter dated 12 the September, 2019 to be violating Section 18(3) of PPV&FR Act, 2001 and Rule 27(2) of PPV&FR Rules, 2003. Further the Registered Breeder should have been a valid assignee of FL 2027 with documentation and duly supported by PV-2 at the time of filing of application for registration of FL 2027 or within six months of making such application. The assignment deed must have been submitted in accordance with Section 18(3) of PPV&FR Act, 2001 read with Rule 27(2) of PPV&FR Rules, 2003. This has



not been done. Thus, the letter dated 12th September, 2019 issued by FLNA is violative of Section 18(3) of PPV&FR Act, 2001 and Rule 27(2) of PPV&FR Rules, 2003.

Section 16 of the PPV&FR Act, 2001, deals with persons who may make application for registration of plant varieties. Section 16(1)(c) of PPV&FR Act, 2001 provides that an application for registration under section 14 shall be made by any person being the assignee of the breeder of the variety in respect of the right to make such application. This proves beyond doubt that an applicant should necessarily have been an "assignee" of the right to file an application for registration of the plant variety at the time of making such application. When it is a predisposing factor for eligibility, it goes without saying that a proof of the same ought to be there as having existed at the time of making the application, even if is submitted within six months of making of application, as is allowed under the provisions of this Act and Rules. This is the combined effect of Section 16(1)(c) and Section 18(3) of PPV&FR Act, 2001 read with Rule 27(2) of PPV&FR Rules, 2003. In the instant case the Registered Breeder claims to be an assignee of FL 2027 at the time of making application based on oral assignment which is not valid in law. By virtue of Section 18(3) of PPV&FR Act 2001, read with Rule 27(2) of PPV&FR Rules, 2003, an oral assignment is not a valid assignment in the law.



An oral assignee is a no assignee in the eye of law. Oral assignment has no place in the IPR jurisprudence of this country including protection of plant breeder's rights on plant varieties. My view is also fortified by the fact that provision similar to Section 18(3) of PPV&FR Act, 2001 is also found in other IP legislation like Section 7(2) of Patents Act.

A person who was ineligible to make an application for registration of the plant variety at the time of making application cannot be shown to have become eligible after registration of the variety. An applicant has to be a breeder or an assignee of the breeder or plant variety right holder at the time of making of the application and not subsequently. A condition precedent for registration cannot be complied after registration.

Further, while examining the contents also, in the letter dated 12th September, 2019 FLNA has only "allowed the Registered Breeder to file". The plea of Registered Breeder that oral assignment of FL 2027 from FLNA to Registered Breeder as evidenced by letter dated 12th September, 2019 is self-defeating and contradictory. As the wordings used therein show that FLNA has only allowed the Registered Breeder to apply for registration of FL 2027 and it is not an assignment of interest of the right to apply for registration of plant variety. Assignment is a transfer of a right from one



party to another, so that the transferred right of the assignor henceforth belongs to the assignee and not retained by the assignor.

Accordingly, I hold that the letter dated 12th September, 2019 issued by FLNA violates Section 16(1)(c) read with Section 18(3) and Rule 27(2) of PPV&FR Rules, 2003 and accordingly the same is inadmissible and cannot be taken on record also in view of same consequences as concluded in (d) above.

f) Whether under Section 34 of PPVFR Act (2001), the registration of FL 2027 could be revoked?

The Registered Breeder furnished contradictory date of first sale of FL 2027 variety while documents showed different dates and despite knowing the fact in terms of novelty status of the variety, the potato variety FL 2027 that was evidently under cultivation at least for more than five years elsewhere in the world, fell under the category of extant variety, filed the same under the category of new variety. With no such document on record for the effected correction of the "inadvertent error" having been made by the representative of Registered Breeder, the Registrar seems to have assumed *suo motu* for the category to be "extant" and had the same tested, accepted, advertised as required in the case of an extant variety and issued certificate of registration of variety FL 2027 as an extant variety in 2016. I cannot escape from recording here that even if



such a correction was effected after submission of the application form by a representative of Registered Breeder (actually, no correction exists on the application form filed, as is being claimed by Registered Breeder) it would have become another violation of the provision where, no representative other than the Applicant could make any correction to the application, and that too after the same is allowed by the Registrar.

The Registered Breeder knowingly filed PV-2 without the signature of assignor or breeder and named it in the name of breeder and signed it himself and failed to submit the assignment deed between FLNA and Registered Breeder. Further the Registered Breeder submitted unstamped assignment between Dr. Robert W. Hoopes (Breeder) to Recot Inc., which is inadmissible. All this clearly proves that the registration of FL 2027 has been obtained on incorrect information furnished by the Registered Breeder. Hence, the case falls under 34(a) of PPV&FR Act, 2001.

The Registered Breeder is neither the assignee nor breeder of the variety. It is an admitted fact that breeder of variety is Dr. Robert W. Hoopes who has assigned it to Recot Inc., (name subsequently changed to FLNA) on an unstamped paper. Further, there is no documented assignment deed in respect of FL 2027 from FLNA to Pepsico Inc's subsidiary Registered Breeder (the applicant then). PV-2 submitted on 16th February 2012



should have been signed not by the Registered Breeder but by FLNA to whom Dr Hoopes had assigned the ownership... These are errors of mammoth proportion considering the commercial value of the variety FL 2027 in the event of any benefit share claim by the original breeder or others associated with the breeder from Recot or FLNA or anyone else who may have a different affiliation or status post submission of application. As such, there is no legitimacy to Registered Breeder to be owner or being the assignee of the breeder of the variety FL 2027 on behalf of Registered Breeder. There is no legitimate authentic assignee to assignee of the breeder of FL 2027 till the issuance of certification of registration by the Registrar in 2016 and subsequently also. The Registered Breeder not being eligible for protection under the Act has obtained certificate of registration. Accordingly, the case falls under Section 34(b) of PPV&FR Act, 2001 also. For this omission caused more by negligent or indifferent handling of the procedures by the Registry rather than an obviously malafide intention is the cause.

The PV-2 filed along with application dated 16th February 2012 contains unstamped assignment deed between Dr. Robert W. Hoopes (Breeder) and Recot Inc., which also is not a legally valid documentation having no witnesses even to endorse that the assignor signatory indeed is Dr Hoopes in 2003, and non-submission of assignment deed between FLNA to



Registered Breeder which all are mandatory in accordance with Section 18(3) of PPV&FR Act, 2001 read with Rule 27(2) of PPV&FR Rules, 2003 also amounts to not providing the Registrar with such document as required for registration. It is beyond any reason or logic that can be acceptable to be admitted as plausible valid deed by which the Registrar accepted the documentation as completing the requirements against his own query issued vide letter dated 2nd/ 9th June, 2011. The Registrar did not exercise the power available with him to satisfy himself before application information or documentation submitted with the application was accepted. Hence, the case falls under Section 34(c) of PPV&FR Act, 2001 also.

From the above facts and sequence of events over the period, no doubts remain in the claim of Revocation Applicant that several farmers have been put to hardship including the looming possibility of having to pay huge penalty on the purported infringement they were supposed to have been committing which did not eventually happen as on date, simply because without being the legitimate breeder or his successor and also not being the assignee of the breeder of the potato variety FL 2027, the Registered Breeder exercised his Plant Breeder's right to file a suit for infringement against farmers (though it was subsequently withdrawn) the fact is that they have been put to hardship. This violates public interest. A person who



is seeking equity must do equity. Accordingly, the case falls under Section 34(h) of PPV&FR Act, 2001 also.

Having held that Dr. Robert W Hoopes is the Breeder of FL 2027 who has not validly assigned it to Assignee (Recot Inc subsequently name changed to FLNA). Also having held that the oral assignment between FLNA and Registered Breeder is legally invalid by virtue of Section 18(3) and Rule 27(2) of PPV&FR Act, 2001 and that the subsequent letter dated 12.09.2019 also does not validate the oral assignment as the Registered Breeder was not the 'assignee' of FL 2027 at the time of making application by virtue of Section 16(1)(c) of PPV&FR Act, 2001. Having also held that the case in hand falls under Section 34 of PPV&FR Act, 2001. I have no other option but to revoke the registration of the FL 2027 variety which is the subject matter of this Revocation Proceedings.

The other arguments of the Revocation Applicant relating to Plant Quarantine, breeders rights vis-à-vis farmers rights and Farmers Harassment are germane to the issue on hand.

Further both the parties have argued that the Registrar-General has affixed his stamp on PV-2 and validated it. It is hereby clarified that Registrar-General affixed his stamp on copy of PV-2 for furnishing a certified copy of the same under Rule 76 of PPV&FR Rules, 2003. Since, in accordance with Section 76 of Indian Evidence Act it has not been mentioned that it is a true copy of the document this confusion has arisen. I henceforth direct the Registrar to comply with Section 76 of Indian Evidence Act while issuing certified copies under Section 83 of PPV&FR Act, 2001.



The Registered Breeder has stated that suit for countering infringement of registered variety is in complete accordance with the provisions of PPV&FR Act, 2001 and has used the FAQs issued by PPV&FR Authority uploaded in the website of the PPV&FR Authority as the basis for filing the infringement suit against the 9 farmers. It is hereby clarified that the said FAQ was withdrawn during December, 2019 and after extensive revision new FAQ has been posted in the website much before final hearing. It is also clarified that FAQs have no statutory base and further in the new FAQs also 'NOT MEANT FOR USE IN LEGAL PROCEEDINGS' has been published. Hence, relying on FAQs of PPV&FR Authority in respect of actions initiated by Registered Breeder is not proper.

Before parting with, the inadequate and indifferent scrutinization of the information, documentation and claims made in the application that also includes another major faux pas of treating an application made for registration of a New Variety as that for an extant variety without ensuring the amendment as required on the application by Registrar in accordance with Act, Rules and Regulations have largely led to this action has also caused enormous hardship to Registered Breeder, Farmers who were listed, Revocation Applicant and the Courts including the Authority itself in the instant matter. This is highly deplorable and a text book illustration of what non-processing of an application of registration of plant varieties in accordance with PPV&FR Act, Rules and Regulations could do to this country. The Registrar being protector of farmers' rights violated the rules and this has caused hardship to farmers and others. This is totally unacceptable. The Registrar is hereby directed to take serious note of it and henceforth such instances should not be repeated in



future by the Registry. In the instant matter queries have been raised and dropped without any justification or reasoning. I direct the Registrar to develop a standardized sheet for evaluation of application for registration of plant varieties in accordance with Act, Rules and Regulations. Registrar may also constitute a committee and submit the detailed report on how to avoid such instances in future. All these to be complied by Registrar forthwith.

The Registry and the Authority have many lessons to take from this matter as it has unfolded above, so that neither the plant breeders who legitimately deserve to have their rights to be exercised on the varieties bred by them by registering those by the Authority nor the user-farmers who in turn, equally deserve to get their due farmers' rights protected so that their livelihoods are not put to jeopardy needlessly, are denied of what is due to them on registered plant varieties. The plant breeders' rights and farmers rights together serve the large interest of keeping the two wheels of agriculture moving forward providing more and more better performing varieties available for enhancing agricultural productivity of the country.

The detailed documentation of the original application and other additional documents as legal entities of the application for registration the potato variety FL 2027 as seen, while examining the case at hand reveals a need for strict compliance to be followed to the provisions of the Act and Rule by the Registry while carrying out the process of registration and Registrars in issuing their orders in the matter. The Registrars and Registrar General of the Authority are hereby instructed that while issuing order in good faith, an action



that is protected under Section 88 of PPVFR Act 2001, the Registrar has to exercise the power with full accountability and responsibility and not overlook documentary evidences submitted while carrying out any action during the process of registration as each of these is deemed to be a judicial proceeding under Section 87 of the same Act. It is insisted that the root cause of this particular Revocation Application proceeding would possibly not have existed had the Registrar exercised his power to accept documentation related to the application of registration only after being fully satisfied with the information provided. In this case, the Registrar has been superficial by only cursorily glancing through the information documentation provided in reply to his own query to the Applicant while accepting incomplete or obviously incorrect documents.

Based on the aforesaid reasonings, I allow the PV-15 filed by the Revocation Applicant to revoke the registration of FL 2027 registered in favour of Registered Breeder under Sections 34 (a), (b), (c) and (h) of PPV&FR Act, 2001. The conditions for revocation laid down in proviso to Section 34 for Revocation of Certificate of Registration of FL 2027 has also been satisfied as the Registered Breeder has filed their objection to Revocation (PV-16), sur-rejoinder and evidence and the Registered Breeder and Revocation Applicant both have been heard on 21st September, 2021.

Accordingly the certificate of registration (Registration No.59 of 2016-Application No.E18 ST1 11 151) dated 1st day of February, 2016 granted by Registrar in favour of the Registered Breeder in respect of the potato variety with denomination FL 2027 is hereby revoked with immediate effect. Necessary mutations be made in the



National Register of Plant Varieties in this regard. Details of Revocation also be published in the Plant Variety Journal of India. The Registrar is also directed to complete all other statutory procedures as due till the date of revocation. Let this be done forthwith by the Registrar and compliance be reported. However, there shall be no order as to costs.

Given under my hand and seal on this the 3rd day of December, 2021.



(K.V.PRABHU)
CHAIRPERSON

