IN THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH- KOLKATA

O.A No: 32 of 2026/EZ

IN THE MATTER OF:-

Madhusudan Palai and Others ……. Applicants

-Versus-

The State of Odisha and others ……Respondents

I N D E X

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CERTIFIED THAT THE COPIES ARE CORRECT

BY THE RESPONDENT NO: 11 TO 16

11.05.2026

THROUGH ADVOCATE

DATE: 11.05.2026

BIRANCHI NARAYAN MAHAPATRA
ADVOCATE, ORISSA HIGH COURT
Mob. No: 8984383812
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X

IN THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

O. A. NO: 32 of 2026/EZ

Madhusudan Palai

and others **...Applicants**

-Versus –

The State of Odisha

and Others **...Respondents**

COUNTER AFFIDAVIT FILED BY THE ABOVE NAMED RESPONDENT NO: 11 TO 16 MOST RESPECTFULLY SHOWETH AS FOLLOWS:-

I **Rasanda Kalas allies Tera Kalas**, aged about 36 years, S/O: Sarat Kalas, at/Po: Malipada, P/S: Jankia, Dist: Khordha, Pin: 752018, Odisha (Respondent No: 16), do hereby solemnly affirm and state on oath as follows:-

1. That the Applicants have challenged the illegal operation of the laterite Stone and Morrum quarry in Ramachandrapur Mouza situated under Tangi Tahasil of Khordha District of Odisha.
2. That the Respondent No: **11 to 16** are not a successful bidder of the quarry in question and they

NOTARY GOVT. OF INDIA Dr. K.M. PANIGRAHY Berhampur (Ganjam) Regd. No 31/2000

FORM PART OF AFFIDAVIT/AGREEMENT NOTARY PUBLIC Berhampur Ganjam. Odisha

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Bose 11.05.2026 (Adv. for the R-No.-11 to 16)

X

are also not as an associates of the successful bidder. The Applicants have been made as a Party to the Respondent No: 11 to 16 without any cause of action. It is evident from the Case record and Particularly **Para-1** of the O.A that the Applicants have been made imaginary pleading and allegations against the Respondent No: 11 to 16 without any supportive documents. It is apt to mention here that the Applicant No: No: 01 has not approached to this Hon'ble Tribunal with clean hand and one of the i.e. **O.A No: 176 of 2024/EZ** is still pending before this Hon'ble Tribunal against the Applicant No: 01 **(Madhu Sudan Palai).** The Applicant is running illegal mining activities for which one of the O.A No: **176 of 2024/EZ** is still pending against the Applicant No: 01. But, the Applicant No: 01 has suppressed the facts and Proceedings of the O.A No: **176 of 2024/EZ** while filing of this O.A against the present Respondents.

NOTARY Dr. K.M. PANIGRAHY Berhampur (Ganjam) Regd. No 31/2000 GOVT. OF INDIA

3. That the averments at **Para-2** of the O.A the Present Respondents has no authority to say anything, which is state of affairs. The Respondents are fairly submitting that the Applicants have also no locus standi to say anything regarding auction of quarry in the Khordha District (as per Annexure-1 of the O.A), it needs judicial scrutiny.

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4. That the averments made in the **Para-3** of the O.A is not relevant to the Respondent No: 11 to 16. The Applicant No: 01 has challenged to the auction process **(vide Annexure-1),** which is crystal clear from the contents of the letter **dated: 08.10.2025** (as **per Annexure-2).** Due to lack of merit of the objection of the Applicants the State authorities were rightly not taken any measures taking in to account of the contents of the letter dated: 08.10.2025 of the Applicant No: 01 and the said objection was rejected by the State authorities and accordingly they have proceeded to the auction of the Sairat Source (Plots in question as per the averments of the O.A). Surprisingly, the Applicants were not challenged to the auction process before the appropriate authority as per the Statutory Provision of law. It is crystal Clear that the Sairat auction Process Could not be challenged before this Hon'ble Tribunal and particularly in the Present form.

5. That the averments made in the **Para-4** is not relevant to the Respondent No: 11 to 16. The Applicants are liable to prove it strictly in accordance with law.

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6. That the averments made in the Para-**5, 6, 7** of the O.A are not all true and the Applicants are liable to prove it strictly in accordance with law. The allegation made in this para is self-designed/ imaginary and got up story as created by the Applicants to make out a false Case against the Respondent No: 11 to 16. The State authorities have not made any allegation against the Present Respondents regarding their illegal acts in respect of the Ramachandrapur quarry.

7. That the averments made in the **Para-8 to 19** of the O.A that the Present Respondents are not related to the Ramachandrapur quarry No: 02 and they are not a lessee. For which there is no issue arise to obtain Environmental Clearance/ CTE/ CTO for the quarry and the State authorities have not taken any steps and measures in respect of the allegation of the Applicants due to no merit of their representation for consideration. It is apt to mention here that the SEIAA, Odisha wrote a letter to the Mining Department and in this connection no communication has been received by the Present Respondents from the State machinery relating to the allegation of the Applicants. Hence, the Respondent No: 11 to 16 has no concern of the correspondences of the SEIAA, Odisha and Mining

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Department. The State is a trustee of the Sairat Source and the State authorities are vigilant for the any kind of illegal acts, but no point of time the State machinery not raised any allegation against the present Respondents. Surprisingly, without investigation from the side of State agency how the Applicants are saying before this Hon'ble Tribunal that the minor minerals has been theft. It is heavy burden for the Applicants to prove their Case regarding theft of Minor minerals from the alleged Site.

8. That the averments made in **Para-20 to 22** are subject matter of State of affairs. The Present Respondents are nothing to say in this Context. It is respectfully submitted here that the Present Respondents have not done any illegal acts over the Plots in question. Hence, the Standing orders will not applicable to the Present Respondents and the Applicants have no locus standi to suggest the parameter of law to the State authorities. How and which way the law will be enforce it is a duty of the State.

9. That the averments made in the Para-**24 to 34** are not applicable to the Respondent No: 11 to 16. The Applicants have failed to make out Case against the Present Respondents with clinching Evidence.

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There is no materials available in the Case record to shows that no complaint has been made by the State authorities since the date of Cause of action i.e. **11.01.2026 as shown by the Applicants (which has been mentioned by the Applicants in Para-7 of the O.A and also the list of dates) regarding theft of miner minerals from the alleged Site.** If any kind of theft has been done the State authorities has not lodged any complaint in this connection. So, the allegation of the Applicants is not tenable in the eye of law. It is a duty of the State authorities to protect the Sairat Source as they are trustee. Surprisingly, the State authorities have not made any complaint regarding theft of the minor menials from the alleged site. For which the allegations made by the Applicants in the O.A are imaginary and they have approached to this Hon'ble Tribunal according to their will and pleasure.

10. That the State machinery has not made any Complainant regarding theft of Minor Minerals from the Site as on date, even though the Site is under custody of the State. If there is no Complainant from the Side of the State regarding theft of the Minor Minerals from the alleged Site, how the Public and local Sarapancha will made allegation in respect of the theft. State machinery is

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the watchdog of the alleged Site. So, how and which way the minor minerals has been theft under the nose of the State, it creates more doubt regarding geniuses of the allegations of the Applicants. It was a duty of the State to lodge Complainant regarding theft of Minor Minerals to find out the real culprits, but no Complainant has been lodged from the side of the State machinery till date. For which the allegation made by the Sarapancha (Applicant No: 01) and Co- Applicants of the O.A are misleading and not tenable in the eye of law.

11. That one of the Case before the Hon'ble NGT, Eastern Zone Bench (Kolkata) is pending against the Sarapancha namely **Madhusudan Palai (Applicant No: 01 of this O.A)** with reference to the **O.A No: 176 of 2024/EZ**. In this O.A one of the Giridhari Dash alleged that **Madhusudan Palai (Applicant No: 01 of this O.A)** has committed theft of Minor Minerals. The said Sarapancha has filed this O.A against the Present Respondents. So, the Applicants have not approached to this Hon'ble Tribunal with clean hands. Copies of the orders Passed in **O.A No: 176 of 2024/EZ in different dates by this Hon'ble Tribunal is** annexed here to as **ANNEXURE-R-16/1 Series**. The **said O.A No:**

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176 of 2024/EZ is posted to **26.05.2026** for further consideration. Surprisingly, the Applicant No: 01 has suppressed the facts and Proceedings of the **O.A No: 176 of 2024/EZ** while filing of this O.A before this Hon'ble Tribunal.

12. That it is evident from the affidavit dated: **13.04.2026** filed by the State Pollution Control Board (Respondent No: 6) that one of the Successful bidder namely **i.e. Dibyendu Prakash Mohanta** has been reflected at **Page No: 11**. It is a settled principle that without hearing from the necessary Party, it will not just and proper to adjudicate of the **O.A No: 32** of **2026/EZ**. Thus, the O.A No: **32 of 2026/EZ is liable to be dismiss with heavy cost**.

13. That again the Applicant No: 01 along with his Co-villagers submitted an representation on **13.10.2025** before the different authorities of the State/ SPCB/ SEIAA along with intimated in the same letter to one of the lessee of Bariko laterite Stone quarry of Khordha District and alleged there in one of the antisocial namely **Giridhari Das** of village Badapari and his henchmen have done theft/ illegal mining (**the said representation is available in the affidavit of the SPCB at Page No: 14 to 20).** The Applicant No: 01 of the O.A has suppressed the

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said representation in his **O.A No: 32 of 2026/EZ** which is highly illegal practice followed by the Applicants of the O.A. The Applicants of the O.A have taken steps to obtain orders by playing fraud. Such attitude of the Applicants of the O.A is misleading to this Hon'ble Tribunal.

14. That the Applicants have alleged that the Respondent No: 10 (Urmila Behera) is the successful bidder of the Ramachandrapur Lateriate Stone Quarry No: 02 and in the other hand the SPCB filed the Affidavit on 13.04.2026 before this Hon'ble Tribunal and stated there in (at **Page No: 11) Urimila Behera** is not a successful bidder of the Laterite Stone Quarry No: 02. Again it is evident from the **Para-6** of the affidavit dated: 13.04.2026 of the SPCB (corresponding to the representation dated: 13.10.2025 of the Applicant No: 01 and his Co- villagers available at **Page No: 14 to 20 of the affidavit dated: 13.04.2026 of the SPCB filed in O.A)** that the alleged Person namely **Giridhari Das and his associates** have committed theft of the Minor minerals over the Plot No: **640** of Khata No: **468 (Pathara Tangi)** and **Plot No: 651** of Khata **No: 463 (Kissam Puratan Patita)** situated under Ramachandtrapur Mouza under Tangi Tahasil of Khordha District of Odisha.

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15. That the Applicants are trying to their level best to Cover up the real culprit of the Case (**namely Giridhari Das and his associates)** and they have filed the O.A No: **32 of 2026/EZ** against the Present Respondents only to harass them. The O.A instituted by the Applicants are covered under the Parameter of the Suppression of material facts/ non-Joinder and Mis- Joinder of Parties.

16. *That* 'Audi Alteram Partem' *is a Latin phrase that means, "Listen to both sides" and it is one of the principles of natural justice. Every party* has a right to a fair hearing. While filing of the O.A No**: 32 of 2026/EZ** the Original Applicants have suppressed the real facts of the Case and not added as a Party to Sri**. Dibyendu Prakash Mohanta and Sri. Giridhari Das and his associates. In view of this the O.A No: 32 of 2026/EZ is not maintainable under the Statutory provision of law.**

17. That the Applicants of the O.A No: **32 of 2026/EZ** obtained orders on **11.03.2026** by placing misleading information/ playing fraud before this Hon'ble Tribunal. For which the Present Respondents are relied the observations of the Hon'ble Apex Court in the matter of **Meghamala and others- Versus- G. Narasingha Reddy and**

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Boa 11.05.2026 (Adv. for R.No-11 to 16)

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others with reference to the Civil Appeal Nos: **6656-6657 of 2010 decided on August 16, 2010**, in the matter of **Dalip Singh- Versus- State of U.P and others** with reference to the **Civil Appeal No: 5239 of 2002 decided on December 03, 2009**, in the matter of **Vijay Syal and another- Versus- State of Punjab and** Others with reference to the **Appeal (Civil) Nos: 812 of 2002** decided on 22/05/2003 and in the matter of **A.V. Papayya Sastry and others- Versus- Government of A.P and others** with reference to the **Appeal (Civil) Nos: 5097-5099 of 2004 decided on March 07, 2007**. Copy of the Orders dated: **11.03.2026 Passed in O.A No: 32 of 2026/EZ** which has been obtained by playing fraud by the Applicants and observations made by the Hon'ble Apex Court are annexed here to as **ANNEXURE-R-16/2 Series.**

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18. That the Applicant No: 01 and another alleged Person namely Giridhari Dash are jointly and collectively instituted this O.A against the Present Respondents.

19. That the O.A No: **32 of 2026/ EZ** is not maintainable from the four corner of law and it is liable to be dismiss with heavy Cost.

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(Adv. for R. No-11 to 16)

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20. That the Present Respondents are craves leave of this Hon'ble Tribunal to file further affidavit, if necessary and for Just decision of the Case.

21. That the Present Respondent is competent to swear this affidavit on behalf of Respondent No: 11 to 15 of this Case.

BY THE RESPONDENTS

11.05.2026

THROUGH ADVOCATE

(Biranchi Narayan Mahapatra)

Enrolment No: O-04/2013

Mob No: 8984383812

Date: 11.05.2026

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FORM PART OF AFFIDAVIT/AGREEMENT NOTARY PUBLIC Berhampur Ganjam. Odisha

(12)

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
Original Application No: 32 of 2026/EZ

IN THE MATTER OF

MADHUSUDAN PALAI & OTHERS **...APPLICANTS**

-Versus-

THE STATE OF ODISHA AND OTHERS **... RESPONDENTS**

AFFIDAVIT

I, **Rasanda Kalas allies Tera Kalas**, aged about 36 years, S/O: Sarat Kalas, at/Po: Malipada, P/S: Jankia, Dist: Khordha, Pin: 752018, Odisha (Respondent No: 16), do hereby solemnly affirm, and declare as under:-

1. That I am Respondent No: 16 of the Case and deponent of this affidavit.
2. That I am fully conversant with the facts and circumstances of the Case and therefore competent to swear this affidavit on behalf of the Respondent No: 11 to 15.
3. That I have read over the contents of the affidavit and the same is true and correct and is drafted by advocate on my instruction.

Rajanande Kalas

DEPONENT

VERIFICATION

Verified on 11.05.2026 at Berhampur that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

IDENTIFIED BY

11.05.2026

ADVOCATE

(B.N. Mahapatra)

Rajanande Kalas

DEPONENT

Dr. K.M. PANIGRAHY, NOTARY
Sl. No. 42/01
TIME
BERHAMPUR (Gm.)

DECLARATION

The deponent having been identified by Advocate Sri B.N. Mahapatra of solemnly affirm before me on this day of 11.05.2026 at ..11..AM/PM that the contents mentioned in this Affidavit are true to his/her knowledge information and belief

Dr. K.M. Panigrahy
NOTARY, Govt. of INDIA
Regd No. 31/2000
Berhampur Ganjam Odisha

(IX) Annexure-R-16/1series

Item No.01 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.176/2024/EZ

Giridhari Das Applicant(s)

Versus

State of Odisha & Ors. Respondent(s)

Date of hearing: 04.09.2024

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Ms. Chinmayee Bhol, Adv. (in Virtual Mode)

ORDER

1. Heard Ms. Chinmayee Bhol, learned Counsel appearing (in Virtual Mode) for the Applicant.

2. This Original Application has been filed by the Applicant stating that he is a lessee of M/s. Bariko Laterite Stone Quarry, Bariko which was granted Consent to Establish (CTE) on 03.12.2022 by the State Pollution Control Board for extraction of Laterite Stone. It is stated that as per the Consent to Operate (CTO), the scheduled area of the said Quarry is Plot No.673, Khata No. 210, Kissam – Pathar Chatana having Leasehold area of 0.880 Ha or 2.173 Acres situated at Bariko Mouza, Vill- Bariko, Tahasil/P.S. – Tangi, Dist. – Khordha. It is stated that the Consent to Operate was granted on 05.01.2023 and Environmental Clearance was granted on 02.06.2022.

3. The allegations in the Original Application interalia are that the Respondent No.12, one Madhu Sudan Palai is illegally extracting and mining Laterite Stone and Morrum in Bariko Mouza of Tangi Tahasil. It is alleged that the illegal extraction of Quarry has been going on in Bariko Mouza from Plot Nos. 693, 692, 694, 686 and

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ANNEXURE R-16/1 series

686/891 which is situated at Bariko Mouza, Vill – Bariko, Tahasil/P.S. – Tangi, Dist. – Khordha.

4. The details of the family member of the Respondent No.12 with respect to the Plot Nos. is given in paragraph 2 of the Original Application which reads as under: -

at page 3.

"Serial No.	*Plot No.*	*Owner Name*	*Relation with Respondent No.12*
1.	*693*	*Binayak Pallai*	*Father*
2.	*692*	*Kamali Pallai, Adaita Pallai, jaga Pallai, Sambhari Pallai, Jogi Pallai*	*Cousins*
3.	*694*	*Kamali Pallai, Adaita Pallai, Jaga Pallai, Sambhari Pallai, Jogi Pallai*	*Cousins*
4.	*686*	*Bharat Pallai*	*Brother-in-law*
5.	*686/891*	*Kailash Pallai*	*Brother-in-law"*

5. The allegations also is that Respondent No.12 is the Sarpanch of the village and is engaged in illegal Laterite Stone and Morrum mining.

6. Matter requires consideration.

7. Issue notice to the Respondents, returnable within four weeks.

8. Mr. Tarun Patnaik, learned Additional Standing Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent Nos.1, 2, 3, 4, 5, 6, 10, 11 and 13, State Respondents, Government of Odisha.

9. Ms. Papiya Banerjee Bihani, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent Nos.7 and 8, Odisha State Pollution Control Board.

10. Mr. Apurba Ghosh, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.9, State Environment Impact Assessment Authority (SEIAA), Odisha.

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ANNEXURE-R-16/1 Series

11. Issue notice to the Respondent No.12, Private Respondent, returnable within four weeks.

12. All the Respondents shall file their counter-affidavits within four weeks.

13. Considering the allegations made in the Original Application, we deem it appropriate to constitute a Committee comprising of the following members:-

    i) Senior Scientist, Odisha State Pollution Control Board;

    ii) Collector and District Magistrate, Khordha or his representative not below the rank of Additional District Magistrate (ADM); and

    iii) Senior Officer of the Department of Mines and Geology, Bhubaneswar.

14. The Odisha State Pollution Control Board shall be the Nodal Body for all logistic purposes and shall file the Fact Finding Report on affidavit.

15. The Committee shall visit the site and submit its Report within three weeks.

16. Learned Counsel for the Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures upon the Counsel for the Respondents who have accepted notices within 24 hours.

17. Mr. Sankar Prasad Pani, learned Counsel who is present in virtual mode in another matter, informs that the Respondent No.12 in this case, Madhu Sudan Palai has filed his own Original Application No.05/2024/EZ in which Mr. Pani is appearing as Counsel, making allegations against Giridhari Das, the Applicant of Original

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ANNEXURE R-16/1 series

Application No.176/2024/EZ and therefore, both the matters may be taken up together.

18. **List on 19.11.2024 along with O.A. No.05/2024/EZ.**

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

September 04, 2024,
Original Application No.176/2024/EZ
SKB

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ANNEXURE-R-16/1 series

Item No.03 & 04 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.176/2024/EZ

Giridhari Das Applicant(s)

Versus

State of Odisha & Ors. Respondent(s)

With

Original Application No.05/2024/EZ

Madhusudan Palai Applicant(s)

Versus

State of Odisha & Ors. Respondent(s)

Date of hearing: 19.11.2024

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

For Applicant(s) : Mr. Anup Kumar Pattnaik, Adv. (in Virtual Mode)

For Respondent(s) : Ms. Aishwarya Dash, ASC for R-1 to 6, 10, 11 & 13 (in Virtual Mode),
Mr. Dipanjan Ghosh, Adv. for R-7 & 8,
Mr. Apurba Ghosh, Adv. for R-9 (in Virtual Mode)
Mr. Sankar Prasad Pani, Adv. a/w
Mr. Ashutosh Padhy, Adv. for R-12 (in Virtual Mode)

For Applicant(s) **(in OA/05/2024/EZ)** : Mr. Sankar Prasad Pani, Adv. a/w
Mr. Ashutosh Padhy, Adv. (in Virtual Mode)

For Respondent(s) : Mr. Partha Sarathi Nayak, AGA for R-1 to 6, 10 & 12 (in Virtual Mode),
Mr. Dipanjan Ghosh, Adv. for R-7 & 8,
Mr. Apurba Ghosh, Adv. for R-9 (in Virtual Mode)
Mr. Anup Kumar Pattnaik, Adv. for R-11 (in Virtual Mode)

ORDER

O.A. No.176/2024/EZ

1. Mr. Anup Kumar Pattnaik, learned Counsel is present (in Virtual Mode) on behalf of the Applicant.

2. A Preliminary Objection on affidavit dated 18.11.2024 has been filed by the Applicant; the same is taken on record.

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ANNEXURE-R-16/1 Series

3. Affidavit dated 18.11.2024 has been filed on behalf of the Respondent No.9, State Environment Impact Assessment Authority (SEIAA), Odisha; the same is taken on record.

4. Affidavit dated 18.11.2024 has been filed on behalf of the Respondent Nos.7 and 8, Odisha State Pollution Control Board; the same is taken on record.

5. Mr. Sankar Prasad Pani, assisted by Mr. Ashutosh Padhy, learned Counsel files Vakalatnama on behalf of the Respondent No.12, Madhu Sudan Palai, Private Respondent; the same is taken on record. When the case is next listed the name of Mr. Sankar Prasad Pani along with Mr. Ashutosh Padhy shall be printed in the cause list as the Counsel for Respondent No.12.

6. Mr. Dipanjan Ghosh, learned Counsel files Vakalatnama on behalf of the Respondent Nos.7 and 8, Odisha State Pollution Control Board; the same is taken on record. When the case is next listed the name of Mr. Dipanjan Ghosh shall be printed in the cause list in place of Ms. Papiya Banerjee Bihani, as the Counsel for Respondent Nos.7 and 8.

7. Mr. Sankar Prasad Pani states that he has not been served with the copy of the affidavit dated 18.11.2024 filed by SEIAA, Odisha. Mr. Apurba Ghosh, learned Counsel shall serve the e-copy of the affidavit upon Mr. Sankar Prasad Pani within 24 hours. Mr. Pani prays for and is granted four weeks time for filing rejoinder response, if any.

Ms. Aishwarya Dash, learned Additional Standing Counsel is present (in Virtual Mode) on behalf of the State Respondents, Government of Odisha. When the case is next listed, the name of Ms. Aishwarya Dash shall be printed in the cause list in place of

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ANNEXURE-R-16/1 Series

Mr. Tarun Patnaik, learned Additional Standing Counsel, as the Counsel for State of Odisha. Learned Counsel prays for and is granted four weeks time for filing counter affidavit. She shall ensure that copy of the affidavit is served upon the Applicant as well all the Respondents before the same is filed. The other parties may also file their responses, if any, before the next date fixed.

O.A. No.05/2024/EZ

8. Mr. Sankar Prasad Pani assisted by Mr. Ashutosh Padhy, learned Counsel is present (in Virtual Mode) on behalf of the Applicant. Learned Counsel prays for and is granted four weeks time for filing rejoinder response, if any.

9. Affidavit dated 04.11.2024 has been filed on behalf of the Respondent Nos.7 and 8, Odisha State Pollution Control Board; the same is taken on record.

10. Mr. Partha Sarathi Nayak, learned Additional Government Advocate is present (in Virtual Mode) on behalf of the State Respondents, Government of Odisha. When the case is next listed, the name of Mr. Partha Sarathi Nayak shall be printed in the cause list in place of Mr. Shakti Prasad Panda, learned Additional Government Advocate, as the Counsel for State of Odisha.

11. **List for hearing on 16.01.2025.**

.....
B. Amit Sthalekar, JM

.....
A. Senthil Vel, EM

November 19 2024,
Original Application No.176/2024/EZ
With
Original Application No.05/2024/EZ
SKB

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ANNEXURE R-16 (1 series

Item Nos.12&13 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.176/2024/EZ
(I.A. No.122/2024/EZ)

Giridhari Das — Applicant(s)
Versus
State of Odisha & Ors. — Respondent(s)

With

Original Application No.05/2024/EZ

Madhusudan Palai — Applicant(s)
Versus
State of Odisha & Ors. — Respondent(s)

Date of hearing: 03.03.2025

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Mr. Anup Kumar Pattnaik, Adv. (in Virtual Mode)

For Respondent(s): Ms. Aishwarya Dash, ASC for R-1 to 6, 10, 11 & 13 (in Virtual Mode),
Mr. Dipanjan Ghosh, Adv. for R-7 & 8,
Mr. Apurba Ghosh, Adv. for R-9,
Mr. Sankar Prasad Pani, Adv. a/w
Mr. Ashutosh Padhy, Adv. for R-12 (in Virtual Mode)

For Applicant(s) (in OA/05/2024/EZ) : Mr. Sankar Prasad Pani, Adv. a/w
Mr. Ashutosh Padhy, Adv. (in Virtual Mode)

For Respondent(s): Mr. Aditya, Adv. for R-1 to 6, 10 & 12 (in Virtual Mode),
Mr. Dipanjan Ghosh, Adv. for R-7 & 8,
Mr. Apurba Ghosh, Adv. for R-9,
Mr. Anup Kumar Pattnaik, Adv. for R-11 (in Virtual Mode)

ORDER

O.A. No.05/2024/EZ

1. Mr. Sankar Prasad Pani assisted by Mr. Ashutosh Padhy, learned Counsel is present (in Virtual Mode) on behalf of the Applicant. Learned Counsel referring to the Inspection Report of an inspection carried out on 19.02.2024 (copy of which has been filed with the

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affidavit of the District Magistrate, District-Khordha) dated 19.04.2024 submitted that in Serial No.3 of the Inspection Report it has been stated that the EC was issued on 17.12.2020 in respect of the sand mining area which was transferred in the name of the lessee, i.e. Respondent No.11 on 02.06.2022.

2. The Inspection Report further mentions that the Lease Agreement was registered on 28.01.2021. Consent to Establish (CTE) was issued by the State Pollution Control Board, Odisha on 03.12.2022 and Consent to Operate (CTO) was issued by the State Pollution Control Board, Odisha on 05.01.2023.

3. The report further mentions that on verification of the T.P. register, it is found that 'Y' form was issued in favour of the lessee on 04.03.2021 which is much prior to the grant of the Consent to Operate (CTO) dated 05.01.2023.

4. Mr. Pani, learned Counsel for the Applicant therefore submits that this is evidence of illegal mining being carried out by the lessee much prior to the grant of CTO on 05.01.2023.

5. We find that this issue has not been addressed by the District Magistrate even though the 'Y' forms are issued by the Tahasildar, Tangi.

6. We, therefore, direct the District Magistrate, District-Khordha to file fresh affidavit giving not only a para-wise reply to the Original Application but also explaining as to whether 'Y' forms issued on 04.03.2021 have been used by the lessee, i.e. Respondent No.11 prior to 05.01.2023.

7. The District Magistrate, District-Khordha shall inquire into the issue and in case it is found that mining has been carried out and 'Y' forms have been used by the lessee prior to 05.01.2023, he shall

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explain in his affidavit as to what action has been taken against the lessee.

8. Let the affidavit be filed within four weeks.

9. Mr. Aditya, learned Counsel holding brief of Mr. Padmesh Mishra, learned Counsel is present (in Virtual Mode) on behalf of the Respondent Nos.1 to 6 and 10 & 12, State Respondents, Government of Odisha.

O.A. No.176/2024/EZ

10. Mr. Anup Kumar Pattnaik, learned Counsel is present (in Virtual Mode) on behalf of the Applicant.

11. In the connected O.A. 176/2024/EZ, we find that in the Inspection Report of an inspection carried out on 05.11.2024, it is stated that fresh measurement is required to calculate the actual volume of minor mineral excavated over the plots in question in the said Original Application.

12. We, therefore, direct Ms. Aishwarya Dash, learned Additional Standing Counsel appearing (in Virtual Mode) on behalf of the State Respondents to ensure that the Director of Mines/District Magistrate, District-Khordha files affidavit within four weeks in this regard.

13. **List on 23.05.2025**.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

March 03, 2025,
Original Application No.176/2024/EZ
(I.A. No.122/2024/EZ)
With
Original Application No.05/2024/EZ
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Items No.10&11 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.176/2024/EZ
(I.A. No.122/2024/EZ)

Giridhari Das — Applicant

Versus

State of Odisha & Ors. — Respondents

With

Original Application No.05/2024/EZ

Madhusudan Palai — Applicant

Versus

State of Odisha & Ors. — Respondents

Date of hearing: 17.03.2026

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

O.A. No. 176/2024/EZ:-

Applicant: Mr. Auroshis Kumar Mohanty, Proxy Counsel for Mr. Anup Kumar Pattnaik, Advocate for the applicant (through VC).

Respondents: Ms. Aishwarya Dash, ASC for respondents no.1 to 6, 10, 11 & 13 (through VC).
Mr. Dipanjan Ghosh, Advocate for respondents no.7 and 8 (through VC).
Mr. Apurba Ghosh, Advocate for respondent no.9 (through VC).
Mr. Sankar Prasad Pani and Mr. Ashutosh Padhy, Advocates for respondent no.12 (through VC).

O.A. No. 05/2024/EZ:-

Applicant: Mr. Sankar Prasad Pani and Mr. Ashutosh Padhy, Advocates for the applicant (through VC).

Respondents: Mr. Aditya, Proxy Counsel for Mr. Padmesh Mishra, Special Counsel for respondents no.1 to 6, 10 and 12 (through VC).
Mr. Dipanjan Ghosh, Advocate for respondents no. 7 and 8 (through VC).
Mr. Apurba Ghosh, Advocate for respondent no.9 (through VC).
Mr. Auroshis Kumar Mohanty, Proxy Counsel for Mr. Anup Kumar Mohanty, Advocate for respondent no.11 (through VC).
Respondent no.13 has been deleted vide order dated 05.03.2024.

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ORDER

1. A written request for adjournment has been made on behalf of learned Counsel for the applicant in O.A. No. 176/2024/EZ who is also representing respondent no. 11 in O.A. No. 05/2024/EZ on the ground of personal difficulty, which is not opposed and is, therefore, allowed.

2. Respondents who have not filed their responses may file their responses within four weeks and no further adjournment will be granted for this purpose.

3. List on 26.05.2026 for further consideration.

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

March 17th, 2026
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(para- 20 to 28)

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 6656-6657 of 2010
(Arising out of SLP (C) Nos. 14447-14448 of 2007)

Meghmala & Ors. ..Appellants

Versus

G. Narasimha Reddy & Ors. ..Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. Judicial pronouncements unlike sand dunes are known for their stability/finality. However, in this case, in spite of the completion of several rounds of litigation upto the High Court, and one round of litigation before this Court, the respondents claim a right to abuse the process of the Court with the perception that whatever may be the orders of the High Court or this Court, inter-se parties the dispute shall be protracted and will never come to an end.

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3. These appeals have been preferred against the Judgment and Order dated 26.04.2007 of the High Court of Andhra Pradesh, at Hyderabad, passed in Writ Petition Nos. 19962-19963 of 2006, by which the High Court has allowed the said petitions against the Judgment and order of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called, "Act 1982"), dismissing the review application No. 397/2005 in LGC No. 76/1996 and in LGCSR 357/2005.

4. Facts and circumstances giving rise to the present cases are as under :-

(A) V. Ram Chandra Reddy and his brother (vendors) had a huge chunk of land and a part of it could have been the subject matter of the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the Act 1976). The said vendors entered into an agreement to sell dated 23.01.1976 for selling a part of the land (hereinafter called 'suit land') to a cooperative society namely, Gruha Lakshmi Cooperative Housing Society Ltd. (hereinafter called, "the Society"). The vendors, V. Ram Chandra Reddy and his brother executed a sale deed in favour of A. Sambashiva Rao (hereinafter called the appellant/applicant) which was registered on 21.05.1980 vide document No. 4758/80 and the appellants were put in possession of the suit land.

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(B) The appellant/applicant- vendee filed LGC No. 76/1996 against the respondents under the provisions of the Act, 1982 alleging that he had been working in Andhra Pradesh State Road Transport Corporation and was mostly out of station, and the respondents had forcibly grabbed his land and raised construction thereon. Thus, he sought the relief of their dispossession and action against them under the provisions of the Act, 1982.

(C) After complying with the requirements of the statutory provisions i.e. taking the sanction etc., the respondents were issued a show cause notice. The respondents filed their reply submitting that in respect of the suit land, there was an agreement to sell, dated 23.01.1976, in favour of the society and once such an agreement to sell had been executed, vendors had no right to transfer the land in favour of the appellant/applicant. The society had allotted the suit land in their favour, therefore, the application was liable to be rejected.

(D) The Special Court after appreciating the evidence, vide Judgment and order dated 4.11.1997 came to the conclusion that the appellant/applicant was the owner of the suit land and that the respondents had no right, title or claim over the suit land. They had forcibly occupied the land and they were land grabbers, thus, they were liable to be evicted and orders for that purpose were passed.

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(E) Being aggrieved by the order of the Special Court dated 4.11.1997, the respondents preferred writ petition No. 33572/1997 before the High Court of Andhra Pradesh, which was dismissed vide Judgment and Order dated 3.07.2001.

(F) Being aggrieved by the order of the High Court, the respondents preferred Special Leave Petition (c) No. 18218/2001 before this Court, which was dismissed as withdrawn vide order dated 2.11.2001 giving liberty to the respondents to file review petition before the High Court.

(G) The respondents filed review petition No. 31506/2002 before the High Court. However, the said review petition was dismissed by the High Court vide order dated 16.12.2002.

(H) In the intervening period, when the review petition was pending before the High Court, the appellant/applicant filed execution proceedings by moving IA No. 518/2002. The Respondents also moved an application to summon the record of the Revenue Divisional Officer, Secundrabad, pertaining to the survey of the suit land along with an application for the stay of Execution proceedings. The Special Court vide order dated 7.11.2002 allowed the Execution Application filed by the appellant/applicant but dismissed the application filed by respondents directing the Revenue Divisional Officer to implement the order dated 4.11.1997.

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(I) The respondents being aggrieved by the common order dated 7.11.2002, filed writ petition nos. 22953 and 23105 of 2002, which were, dismissed by the High Court vide order dated 17.12.2002.

(J) In pursuance of the order in Execution Proceedings dated 7.11.2002, the appellants were put into possession of the suit land on 16.12.2002.

(K) The respondents being aggrieved by the order of the High Court dated 17.12.2002, preferred review petitions before the High Court, which were dismissed by the Court vide order dated 17.11.2003.

(L) The respondents filed Review Application no. 397/2005 in LGC No. 76 after an inordinate delay, seeking review of the order dated 4.11.1997. The respondents subsequently filed an application in LGCSR No. 357/2005 before the Special Court for fresh declaration that they were the owners and that the appellants, who had succeeded throughout the litigation, were the land grabbers. The respondents in the said application impleaded persons other than the appellant/applicant also, i.e. the vendors of the appellant/applicant and govt. officials etc., who are the other appellants in these cases. The Special Court dismissed the said applications vide orders dated 6.7.2006 and 11.7.2006.

(M) The respondents, being aggrieved by both the orders, filed Writ Petition Nos. 19962 and 19963 of 2006, which have been allowed by the

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High Court vide impugned Judgment and order dated 26.04.2007, directing the Special Court to decide both the applications afresh on merit, as in the opinion of the High Court, the applications required certain inquiry on factual matters and the claim of the respondents could not have been rejected merely on the determination and attaining finality of orders in earlier proceedings. Hence, these appeals.

5. Sh. P. Vishwanatha Shetty, learned senior counsel appearing for the appellants, has submitted that even if there was an agreement to sell by the vendor of the appellants in favour of the society, such an agreement did not confer any title in the suit land in their favour. The respondents had not been the members of the said Society, nor had any allotment ever been made by the Society in their favour. The earlier proceedings came to an end after having several rounds of litigation upto the High Court and one round upto this Court. The orders passed therein attained finality and in pursuance of the same, the appellant/applicant came into possession of the suit land. Issues of fraud and identification of land had been in issue in some of the earlier proceedings. Once the respondents had approached this Court, the question of entertaining the review petition after an inordinate delay of 7-8 years does not arise. The respondents have no locus standi to ask the Special Court to determine under what circumstances the

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appellant/applicant had obtained the suit land. An application to call for certain records in respect of the suit land from 1972 to 2002, the survey reports etc. cannot be made by them. The High Court has gravely erred in interfering with the orders of the Special Court rejecting both the applications. Thus, the appeals deserve to be allowed.

6. Per contra, Sh. M.V. Durga Prasad, learned counsel appearing for the respondents submitted that the transfer of land in favour of the appellant/applicant vide registered sale deed dated 21.05.1980 was itself a fraudulent transaction and material in this regard was suppressed from the Special Court while obtaining the orders in their favour. Fraud vitiates everything. The respondents have raised the issue of the identification of the suit land. Thus, the applications filed by the respondents were maintainable and the High Court has rightly reversed the orders passed by the Special Court. The appeals lack merit and no interference is warranted by this Court.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

Admittedly, there is a registered sale deed in favour of the appellant/applicant dated 21.05.1980 and there may be an agreement to sell in favour of the society dated 23.01.1976. It is settled legal proposition that

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an agreement to sell does not create any right, or title in favour of the intending buyer. The Society did not file suit for specific performance against the vendors prior to the execution of sale deed in favour of the appellant/applicant on 21.05.1980. The Special Court, after appreciating the entire evidence on record, came to the conclusion that the appellant/applicant was the owner and was in actual physical possession of the land and that the respondents had grabbed the said land. The Special Court has observed as under :-

> *"In the cross-examination, RW1 (respondent No.1 herein) had to admit that they have not filed any document to show that the said plot was allotted in their favour by the society and that they have not filed any document to show that they are the members of the said society. He also admitted that without any municipal sanction or permission, they raised the construction in the scheduled land."*

The Special Court further held that the respondents were land grabbers within the meaning of the Act, 1982 and thus, they were directed to restore the premises to the appellant/applicant. These findings of fact had been affirmed upto the High Court.

8. The record of the case reveals that respondents have filed review petitions before the Special Court as well as before the High Court. However, all the applications had been dismissed by the Courts concerned.

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The respondents again filed an application seeking review of the order dated 4.11.1997. Section 17-A of the Act, 1982 provides that in order to prevent the miscarriage of justice, a review application can be entertained on the grounds that the order has been passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of law. Limitation for filing the review application before the Special Court has been prescribed under Rule 18 of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988, as 30 days from the date of the order of which the review is sought. The respondents had earlier challenged the said order dated 4.11.1997 before the High Court, as well as before this Court. Review petitions had been filed before the Special Court, as well as before the High Court. Thus, question does arise as to whether it is permissible for a litigant to file a review application after approaching the superior forum/court.

Review – After approaching the Higher Forum:-

9. In **M/s. Kabari Pvt. Ltd.** Vs. **Shivnath Shroff & Ors.** AIR 1996 SC 742, this Court had taken a view that the court cannot entertain an application for review if before making the review application, the superior court had been moved for getting the self-same relief, for the reason that for

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the self-same relief two parallel proceedings before the two forums cannot be taken.

10. In **State of Maharashtra & Anr.** Vs. **Prabhakar Bhikaji Ingle** AIR 1996 SC 3069, this Court held that when a special leave petition from the order of the Tribunal was dismissed by a non-speaking order, the main order was confirmed by the Court. Thereafter, the power of review cannot be exercised by the Tribunal as it would be "deleterious to the judicial discipline".

11. Same view has been reiterated by this Court in **Raj Kumar Sharma** Vs. **Union of India** (1995) 2 Scale 23; **Sree Narayana Dharmasanghom Trust** Vs. **Swami Prakasananda & Ors.** AIR 1997 SC 3277; **K. Ajit Babu & Ors.** Vs. **Union of India & Ors.** (1997) 6 SCC 473; and **Gopabandhu Biswal** Vs. **Krishna Chandra Mohanty & Ors.** AIR 1998 SC 1872.

12. In **Abbai Maligai Partnership Firm & Anr.** Vs. **K. Santhakumaran & Ors.** AIR 1999 SC 1486, a three Judge Bench of this Court considered the issue afresh and held that filing of the review petition after dismissal of the special leave petition by it against the self-same order amounted to an abuse of process of the court and the entertainment of such a

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review application was in affront to its order and it was subversive of judicial discipline.

13. In **Kunhayammed & Ors.** Vs. **State of Kerala & Anr.** AIR 2000 SC 2587, a three Judge Bench of this Court reconsidered the issue and all above referred judgments and came to the conclusion that dismissal of special leave petition in limine by a non-speaking order may not be a bar for entertaining a review petition by the court below for the reason that this Court may not be inclined to exercise its discretion under Article 136 of the Constitution. The declaration of law will be governed by Article 141 where the matter has been decided on merit by a speaking judgment. In that case doctrine of merger would come into place and lay down the following principles:-

> *(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*
>
> *(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is*

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granted and the special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the

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declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

14. The Court came to the conclusion that where the matter has been decided by a non-speaking order in limine the party may approach the High Court by filing a review petition.

Similar view has been reiterated in **National Housing Coop. Society Ltd**. Vs. **State of Rajasthan & Ors**. (2005) 12 SCC 149.

15. In **K. Rajamouli** Vs. **A.V.K.N. Swamy** AIR 2001 SC 2316, this Court considered the ratio of the judgment in **Kunhayammed** (supra); and **Abbai Maligai Partnership Firm** (supra) and held that if a review application has been filed before the High Court prior to filing the special leave petition before this Court and review petition is decided/rejected, special leave petition against that order of review would be maintainable. In case the review application has been filed subsequent to dismissal of the

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special leave petition it would amount to abuse of process of the court and shall be governed by the ratio of the judgment in **Abbai Maligai Partnership Firm** (supra). The said judgment has been approved and followed by this Court in **M/s. Green View Tea & Industries** Vs. **Collector, Golaghat, Assam & Anr.** AIR 2004 SC 1738.

16. In **Kumaran Silk Trade (P) Ltd.** Vs. **Devendra** AIR 2007 SC 1185, this Court held as under :-

> *"As a matter of fact at the earlier stage this Court did not consider the question whether one of the appeals against the order dismissing the Review Petition on merits was maintainable. At best the order of remand and the decision in **Kunhayammed & Ors.** v. **State of Kerala & Anr.** (2000) 6 SCC 359 would enable the petitioner to get over the ratio of the three Judge Bench decision in **Abbai Maligai Partnership Firm & Anr.** v. **K. Santhakumaran & Ors.** (1998) 7 SCC 386 that the seeking of a review after the petition for special leave to appeal was dismissed without reserving any liberty in the petitioner was an abuse of process."*

17. Thus, the law on the issue stands crystallized to the effect that in case a litigant files a review petition before filing the Special Leave Petition before this Court and it remains pending till the Special Leave Petition stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to dismissal of the Special Leave Petition, the process of filing review application amounts to abuse of process of the court.

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18. In view of the above, we are of the considered opinion that filing of such a review application by the respondents at a belated stage amounts to abuse of process of the Court and such an application is not maintainable. Thus, the High Court ought not to have entertained the writ petition against the order of dismissal of the review application by the Special Court and the order of the High Court to that extent is liable to be set aside.

19. So far as the other application filed by the respondents before the Special Court is concerned, it is based on the grounds that earlier judgment and order had been obtained by the appellant/applicant suppressing material facts and the suit land had not been identified properly, and therefore, the judgment of the Special Court duly affirmed by the High Court stood vitiated.

Fraud/Misrepresentation: –

20. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide **S.P. Chengalvaraya Naidu (dead) by L.Rs.** Vs. **Jagannath (dead) by L.Rs. & Ors.** AIR 1994 SC 853). In **Lazarus Estate Ltd.** Vs. **Besalay** 1956 All.

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E.R. 349), the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

21. In **Andhra Pradesh State Financial Corporation** Vs. **M/s. GAR Re-Rolling Mills & Anr.** AIR 1994 SC 2151; and **State of Maharashtra & Ors.** Vs. **Prabhu** (1994) 2 SCC 481. this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

22. In **Smt. Shrisht Dhawan** Vs. **M/s. Shaw Brothers.** AIR 1992 SC 1555, it has been held as under:–

> *"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."*

23. In **United India Insurance Co. Ltd.** Vs. **Rajendra Singh & Ors.** AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

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24. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr.** Vs. **M. Tripura Sundari Devi** (1990) 3 SCC 655; **Union of India & Ors.** Vs. **M. Bhaskaran** (1995) Suppl. 4 SCC 100; **Vice Chairman, Kendriya Vidyalaya Sangathan & Anr.** Vs. **Girdharilal Yadav** (2004) 6 SCC 325; **State of Maharashtra** *v.* **Ravi Prakash Babulalsing Parmar** (2007) 1 SCC 80; **Himadri Chemicals Industries Ltd.** Vs. **Coal Tar Refining Company** AIR 2007 SC 2798; and **Mohammed Ibrahim & Ors.** Vs. **State of Bihar & Anr.** (2009) 8 SCC 751).

25. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide **Dr. Vimla** Vs. **Delhi Administration** AIR 1963 SC 1572; **Indian Bank** Vs. **Satyam Fibres (India) Pvt. Ltd.** (1996) 5 SCC 550; **State of Andhra Pradesh** Vs. **T. Suryachandra Rao** AIR 2005 SC 3110; **K.D.**

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Sharma Vs. **Steel Authority of India Ltd. & Ors.** (2008) 12 SCC 481; and **Regional Manager, Central Bank of India** Vs. **Madhulika Guruprasad Dahir & Ors.** (2008) 13 SCC 170).

26. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide **S.P. Changalvaraya Naidu** (supra); **Gowrishankar & Anr.** Vs. **Joshi Amba Shankar Family Trust & Ors.** AIR 1996 SC 2202; **Ram Chandra Singh** Vs. **Savitri Devi & Ors.** (2003) 8 SCC 319; **Roshan Deen** Vs. **Preeti Lal** AIR 2002 SC 33; **Ram Preeti Yadav** Vs. **U.P. Board of High School & Intermediate Education** AIR 2003 SC 4628; and **Ashok Leyland Ltd.** Vs. **State of Tamil Nadu & Anr.** AIR 2004 SC 2836).

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27. In **kinch** Vs. **Walcott** (1929) AC 482, it has been held that "....mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained y perjury."

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

28. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is *non est.*

29. The instant case required to be examined in the light of the aforesaid settled legal propositions.

The case of the respondents has been that transfer by the vendor in favour of the appellant was not genuine. Material information had been suppressed from the Special Court. More so, there was no proper identification of the suit land in the earlier litigation. The reports submitted in this regard were not correct.

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30. Respondents have never been able to show as under what circumstances they are interested in the suit land because before the Special Court in the first round they failed to show any document that land had ever been transferred by the tenure holders/owners in favour of the Society or the Society had made any allotment in their favour or they were member of the said Society or they obtained any sanction from statutory authority to raise the construction.

Shri M.V. Durga Prasad, Ld. Counsel appearing for the said respondents was repeatedly asked by us to show any document on record linking the said respondents with the suit land. Though, he argued for a long time, raised large number of issues but could not point out a single document which may reflect that respondents could have any claim on the suit land. Therefore, we are of the considered opinion that the application at their behest was not maintainable.

31. The issue of mis-representation/fraud, suppression of material fact and identification of land had been in issue in earlier review petitions before the Special Court and in the Writ Petitions before the High Court. In this regard, the Special Court in execution proceedings was fully satisfied regarding the identity of land on the basis of revenue record and came to the conclusion that there was no mis-representation or fraud on the part of the

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appellant/applicant. The order of the Special Court dated 11th July, 2006 made it clear that all these issues had been agitated in earlier proceedings. The Special Court has held as under:

> *"The applicants herein as contended in this L.G.C. have filed IA No.869/2002 for stay of proceedings and IA No. 861/2002 for summoning the record in File No.B/9815/97 from the office of the Revenue Divisional Officer* ***on the ground of alleged fraud played by the Mandal*** *Revenue Officer and the Mandal Surveyor. Those petitions were heard at length and were dismissed holding that the alleged fraud as contended by the applicants herein was not made out and the property which is the subject matter of L.G.C. No.76/96 should be delivered to the respondents herein by evicting the applicants. As mentioned already, in execution of the said order, applicants herein were evicted and possession was delivered to the respondents.*
>
> *Admittedly, the common order passed in IA Nos. 518/2002, 861/2002 and 869/2002, by this Court was questioned by the applicants herein by filing Writ Petitions before the Hon'ble High Court of A.P. and the same was also dismissed holding that the* ***applicants herein are trying to protract the litigation*** *and to delay the delivery of possession of the property in question to the respondents."(emphasis added)*

32. In another case decided by the Special Court vide order dated 6th July, 2006 the Court had taken note of the pleadings in respect of identification of land and mis-representation/fraud/collusion in the earlier proceedings and the observations made by the Writ Court in its order dated 17th December, 2002 that the said respondents were interested in protracting the litigation and obstructing the implementation of the order of the Special Court dated

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4.11.1997. The said order had been passed in Application No. 51 of 2002 where one of the main grounds had been that the appellant/applicant had **played fraud** in obtaining the said order as is taken note of in paragraph 13 of the said order by the Special Court. The Special Court also took note of earlier direction to the Revenue Divisional Officer to identify the land and possession of the same was delivered to the decree holder. The said order was under challenge before the High Court in Writ Petition Nos. 22953/2002 and 23105/2002 wherein pleading of the alleged fraud and mis-identification of suit land were taken. The Special Court came to the conclusion that there was no suppression of any fact by the revenue authorities or the court was misled at the time of obtaining such orders.

33. There is a registered sale deed dated 21.5.1980 in favour of the appellant/applicant. Nobody has ever filed any application before the competent court to declare said sale deed as null and void. Respondents have no right or interest in the suit property. The Society claimed to have an agreement to sell in its favour which did not confer any title in favour of the Society. A finding of fact had been recorded in earlier proceedings that the appellant/applicant was in actual physical possession of the land and he was illegally/forcibly dispossessed by the respondents.

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Forcible dispossession:-

34. Even a trespasser cannot be evicted forcibly. Thus, a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law. (Vide **Midnapur Zamindary Co. Ltd.** Vs. **Naresh Narayan Roy** AIR 1924 PC 124; **Lallu Yeshwant Singh** Vs. **Rao Jagdish Singh & Ors.** AIR 1968 SC 620; **Ram Ratan** Vs. **State of U.P.** AIR 1977 SC 619; **Express Newspapers Pvt. Ltd. & Ors.** Vs. **Union of India & Ors.** AIR 1986 SC 872; and **Krishna Ram Mahale** Vs. **Mrs. Shobha Vankat Rao** AIR 1989 SC 2097) .

35. In **Nagar Palika, Jind** Vs. **Jagat Singh** AIR 1995 SC 1377, this Court observed that Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

36. Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide **Bishan Das** Vs. **State of Punjab** AIR 1961 SC 1570; **Express Newspapers Pvt. Ltd.** (supra); **State of U.P. & Ors.** Vs. **Maharaja Dharmander Prasad Singh**

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& Ors. AIR 1989 SC 997; and **State of West Bengal & Ors.** Vs. **Vishnunarayan & Associates (P) Ltd. & Anr.** (2002) 4 SCC 134).

37. The forcible eviction of the appellant/applicant by the respondents was unwarranted and unlawful. Proceedings had been initiated under the Act, 1982. It is a special Act to prevent illegal activities of land grabbing. The Legislature, in its wisdom, constituted a Special Court presided over by a person who is or eligible to be the Judge of the High Court, and consisting of the Members who are or eligible to become District Judge and District Collector. Therefore, persons having enough experience and who have acquired a higher status have been given responsibility to adjudicate upon the disputes under the Act 1982. That Special Court has been conferred with the powers of Civil or Criminal Courts.

As per the provisions of Section 10 of the Act 1982, the burden of proof is on the accused to prove that he is not guilty. Thus, it is not like any other criminal case where accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right, however, subject to the statutory exceptions, the said principle forms the basis of Criminal Jurisprudence. For this purpose, the nature of offence, its seriousness and gravity thereof has to be taken into consideration. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988;

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and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. Thus, the Legislature has adopted a deviating course from ordinary criminal law shifting the burden on the accused to prove that he was not guilty. The High Court while deciding these cases has not considered the issue of the locus standi of the respondents to maintain the application for eviction of the appellant/applicant. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution.

38. In view of the above factual position, we reach the following conclusions:

(i) There has been a registered sale deed in favour of the appellant/applicant by the vendors which was registered on 21.5.1980 and he was put in possession.

(ii) Prior to the execution of the said sale deed there has been an agreement to sell dated 23.1.1976 in favour of the Society.

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(iii) In respect of the said agreement to sell the litigation remained pending before the Civil Court but there is nothing on record to show as to what had been its outcome.

(iv) An agreement to sell did not confer any right on the Society, though the appellant acquired the title over the suit land by execution and registration of the sale deed dated 21.5.1980.

(v) The respondents had not been the members of the Society nor Society made any allotment in their favour.

(vi) Before the Special Court, the respondents could not show as under what circumstances they could stake their claim on the suit land and no document worth the name could be shown which may link them to the suit land.

(vii) Respondents grabbed the suit land forcibly and raised a construction without any authorisation.

(viii) In spite of our repeated queries, learned counsel for the respondents could not point out a single document on record to show that they could have any right, interest or title in the suit land.

(ix) The litigation completed several rounds before the High Court and this is the second round of litigation before this Court.

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(x) All the courts proceedings reveal that after proper adjudication the declaration had been made that suit land belonged to the appellant/applicant and respondents were merely land grabbers.

(xi) In earlier review petitions filed by the respondents before the Special Court and further taking the matter to the High Court in Writ Petitions and Review Applications before the High Court the issue of mis-representation/fraud/collusion and mis-identification of the suit land had been raised but they could not succeed.

(xii) In execution proceedings, the appellant/applicant succeeded and came in possession of the suit land in 2002.

(xiii) Respondents filed frivolous application raising the issue of fraud and mis-identification of the suit land which had earlier been adjudicated upon. The review application was filed at much belated stage.

(xiv) The review application was certainly not maintainable as the respondents had approached the higher forum and it merely amounted to abuse of process of the court.

(xv) The respondents had been interested only to protract the litigation by one way or the other.

(xvi) Fresh proceedings taken by the respondents before the Special Court in fact, is tantamount to malicious prosecution.

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39. The High Court failed to take all aforesaid factors into consideration before passing impugned judgment and order.

40. In view of the above, we are of the considered opinion that judgment and order of the High Court impugned herein, is not sustainable in the eyes of law. The appeals are allowed. The judgment of the High Court dated 26.4.2007 is set aside and the judgments and orders dated 6.7.2006 and 11.7.2006 passed by the Special Court are restored. No costs.

.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
August 16, 2010

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para- 01 to 09 & 21

REPORTABLE

kindly peruse page No- 54 to 59 & 69

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5239 OF 2002

Dalip Singh ...Appellant

Versus

State of U.P. and others ...Respondents

ORDER

1. For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new

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creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

2. In **Hari Narain v. Badri Das** AIR 1963 SC 1558, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

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3. In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.** AIR 1983 SC 1015, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

4. In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another** AIR 1991 SC 1726, the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

5. In **S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others** JT 1993 (6) SC 331, the Court held that where a preliminary decree was obtained by withholding an important

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document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

6. In **Prestige Lights Ltd. V. State Bank of India** (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in **R v Kensington Income Tax Commissioners** (1917) 1 K.B. 486, and observed:

> "In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

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7. In **A.V. Papayya Sastry and others v. Government of A.P. and others**, AIR 2007 SC 1546, the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

8. In **Sunil Poddar & Ors. v Union Bank of India** (2008) 2 326, the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

9. In **K.D. Sharma v. Steel Authority of India Ltd. and others** (2008) 12 SCC 481, the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with

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clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in **G. Jayshree and others v. Bhagwandas S. Patel and others** (2009) 3 SCC 141.

10. This appeal, which is directed against order dated 21.5.2001 passed by the Allahabad High Court is illustrative of how unscrupulous litigants can mislead the authorities entrusted with the task of implementing the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short, "the Act") and the courts for retaining possession of the surplus land. The tenure-holder – Praveen Singh did not file statement in terms of Section 9(2-A) of the Act in respect of his holding as on 24.1.1971. After about four years, the Prescribed Authority issued notice dated 29.11.1975 under Section 10(2) of the Act and called upon Shri Praveen Singh to show cause as to why the statement prepared under Section 10(1) of the Act may not be taken as correct and his land may not be declared surplus accordingly. A copy of the statement was sent to Shri Praveen Singh along with the notice in C.L.H. Form No.4. For the sake of convenient reference, the notice is reproduced below:

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"C.L.H. FORM NO. 4

(See Rule 8)

(Form of Notice under Section 10(2) of the imposition of Ceiling on Land Holdings Act, 1961)

To,
Name of tenure-holder Sri Praveen Singh
With parentage s/o. Shri Raghubir Singh and
Address r/o Village Tisotara, P.O. Khas, Pargana Kirat Pur, Tehsil Najibabad, District Bijnor.

Whereas you have failed to submit a statement/have furnished incomplete/incorrect statement in respect of all your holdings in the State of Uttar Pradesh including holdings of your family members with all the required particulars within the time mentioned in the notice in C.L.H. Form 1, published under Section 9;

And whereas the statement of all holdings held by you in the State on 8th June, 1973, statement showing proposed ceiling area applicable to you and the proposed surplus land have been prepared under sub-section (1) of Section 10, they are sent to you herewith and you are hereby called upon to show cause within a period of 15 days from the date of service of this notice, why the said statement be not taken as correct.

On your failure to dispute the correctness of the statements in any court, within the time allowed, the aforesaid statement shall be treated as final and ceiling area applicable to you and the surplus land shall be determined accordingly.

Given under my hand and seal of the Court this day of 29-11-1975.

S/d-
Signature of the Prescribed Authority of the Sub-Division Prescribed Authority
Tehsil Najibabad."

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11. The notice was delivered to Shri Praveen Singh on 3.12.1975, but he neither filed any objection to the proposed determination of his surplus land nor sought extension of time for the said purpose. After service of notice, the Prescribed Authority adjourned the case on 10.12.1975 and again on 19.12.1975 apparently with the hope that the tenure-holder may file objection to the statement prepared under Section 10(1). This is evident from the proceeding sheets of the two dates, which are reproduced below:

Proceedings dated 10.12.1975

10.12.1965	File received after service of notice on the tenure-holder on 3.12.1975. It is ordered that the file be put up on 19.12.1975 after receipt of objections. Sd/- Prescribed Authority

Proceedings dated 19.12.1975

19.12.1975	File put up. The tenure-holder has not filed any objection despite service. It is ordered that the file be put up for ex-parte orders on 27.12.1975. Sd/- Prescribed Authority"

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12. On 27.12.1975, the Prescribed Authority noted that Shri Praveen Singh has not filed any objection and declared that 18.22 acres of irrigated land was surplus in the hands of the tenure-holder. After six months and twelve days, Shri Praveen Singh submitted an application dated 8.7.1976 along with what was termed as an affidavit before the Prescribed Authority and prayed that ex parte order dated 27.12.1975 may be set aside and he may be given opportunity to file objections and tender evidence. The Prescribed Authority rejected the application on the same day i.e. 8.7.1976 by observing that no valid ground has been made out for reconsidering the matter after six months. The appeal preferred by Shri Praveen Singh against the order of the Prescribed Authority was dismissed by Additional Commissioner (Judicial), Allahabad (Appellate Authority) in default because no one appeared on the date of hearing. The restoration application filed by Shri Praveen Singh was dismissed on 27.8.1980. He then challenged the orders of the Prescribed Authority and Appellate Authority in Writ Petition No. 8342/1980, which was allowed by the High Court and the matter was remitted to the Appellate Authority with a direction to decide the application of Shri Praveen Singh afresh in accordance with law.

13. In compliance of the direction given by the High Court, the Appellate Authority reconsidered the appeal of Shri Praveen Singh but dismissed the same on the ground that the tenure-holder had not filed an application

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under Section 5 of the Limitation Act for condonation of the delay and even in the application filed for setting aside the ex parte order, no cause was shown for the delay. The Appellate Authority also observed that the tenure-holder had not denied receipt of notice dated 29.11.1975 issued under Section 10(2) of the Act, but did not file any objection till the passing of ex parte order on 27.12.1975 and that his assertion of having come to know of the ex parte order from Lekhpal Halqa on 7.7.1976 is not believable. It appears that after remand of the matter by the High Court, Shri Praveen Singh died and, therefore, his legal representatives (including the appellant herein) were substituted in his place.

14. The legal representatives of Shri Praveen Singh jointly filed Civil Miscellaneous Writ Petition No. 22790/1990 and prayed for quashing of orders dated 27.12.1975, 8.7.1976, 7.8.1990 passed by the Prescribed Authority and the Appellate Authority respectively. They also prayed for issue of a direction to the Appellate Authority to remand the case to the Prescribed Authority for entertaining their objections. In paragraph 3 of the writ petition, the following statement was made:

> "That the petitioner's late father, against whom the proceedings had been initiated under Section 10(2) of the Ceiling Act, filed application on 8.7.1976 supported by an affidavit stating therein clearly that he was seriously ill for about ten months as such he was not in a position to file objection, and as a matter of fact he did not have any knowledge of the date of the proceedings that were being

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conducted before the prescribed authority. True copy of the application dated 8.7.1976 of petitioners' late father is annexed herewith as Annexure 2. True copy of the affidavit filed in support of the application dated 8.7.1976 of the petitioners' father is annexed herewith as annexure 3."

(Emphasis added)

15. By an order dated 7.9.1990, the learned Single Judge of the Allahabad High Court stayed the operation of the orders passed by the Prescribed Authority and the Appellate Authority. The interim order remained operative till 21.5.2001 that is the date on which the writ petition was finally dismissed and during the interregnum the appellant continued to enjoy the property.

16. In the special leave petition filed against the order of the High Court, notice was issued on 12.10.2001, but the appellants prayer for stay was declined. Thereafter, the surplus land of the tenure-holder was distributed among the landless persons who were joined as parties pursuant to order dated 27.3.2006 passed in I.A. No. 9/2004.

17. After service of notice, respondent Nos. 1 to 3 filed counter in the form of an affidavit of Shri Pradip Kumar Singh, Additional Tehsildar, District Bijnor, U.P. In his affidavit, Shri Pradip Kumar gave details of the steps taken by the Prescribed Authority in terms of Section 10(1) and

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10(2) of the Act and made a categorical assertion that notice issued on 29.11.1975 was duly served upon Shri Praveen Singh on 3.12.1975. This is evident from paragraphs 4(iv) and (v) of the counter affidavit read as under:

> "(iv) That the averments of facts made in the list of dates against date 7.7.1976 are not admitted being incorrect. The notice in CLH Form No. 4 having been served on the tenure-holder on 3.12.1975, it was for him to have filed his objection. It was for the tenure-holder to have managed his affairs. It is not for a Court or an Authority to communicate to the tenure-holder each and every order passed by it once service of the notice is complete, the Act does not require that each and every date of proceedings and the copy or information about the final order ex parte or otherwise be served on him. The tenure-holder avoided to file his objections since he had none. The statement of surplus land is prepared by the revenue authorities in accordance with the provisions of the Act which is prepared on the basis of revenue records of land held by a tenure-holder in his name and there is `Presumption of correctness of the revenue record.'
>
> (v) That the averments of fact in list of date against date 8.7.1976 are not admitted as stated. It is submitted that an application dated 8.7.1976 filed by the tenure-holder did not dispute service of notice in CLH Form No. 4 dated 29.11.1975. The application was of a general nature. If a tenure-holder having been asked to file objections within 15 days of the date of service of him `chooses not to do so', would proceed to a presumption that he has nothing to say. Section 11 o the Act provides that where a tenure-holder chooses not to dispute and not to file any objection to the statement prepared by the Prescribed Authority under Section 10 of the Act within the stipulated period, the Prescribed Authority `shall' accordingly determine the surplus land of the tenure-holder. Sub-section (2) of Section 11 of the Act further provides that where an application is made by a tenure-holder within thirty days of the date of an order under sub-section (11) of the Act, that being a statutory duly cast on the

> Prescribed Authority. In the present case the Prescribed Authority after passing order dated 27.12.1975 fixed the next date as 27.1.1976 i.e. after 30 days and it is only on 27.1.1976 that the Prescribed Authority sent notification regarding publication of surplus land in official Gazette which was so published on 5.6.1976."

18. Shri Sunil Kumar Singh, son of the appellant Dalip Singh and grandson of late Shri Praveen Singh filed rejoinder affidavit dated 18th February, 2002. In paragraph 3 of the rejoinder affidavit Shri Sunil Kumar Singh made the following statement :-

> "That it is denied categorically that the father of the petitioner had ever received the notice dated 29.11.1975 along with the statement of surplus land, prepared under section 10(1) of the Act. It is humbly stated that father of the petitioner could not file any show cause without going through the above referred statement prepared under Section 10(1) of the Act."

19. We have heard learned counsel for the parties and scrutinized the record. In our opinion, the appeal is liable to be dismissed only on the ground that the tenure-holder Shri Praveen Singh did not state correct facts in the application filed by him on 8.7.1976 before the Prescribed Authority for setting aside the ex parte order and the appellant did not approach the High Court with clean hands inasmuch as, by making a misleading statement in paragraph 3 of the writ petition, an impression was created that the tenure-holder did not know of the proceedings initiated by the Prescribed Authority. By making the said statement, the

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appellant succeeded in persuading the High Court to pass an interim order which resulted in frustrating the efforts made by the concerned authority to distribute the surplus land among landless persons. Even before this Court, a patently false statement has been made in the rejoinder affidavit on the issue of receipt of notice dated 29.11.1975 by Shri Praveen Singh.

20. A perusal of application dated 8.7.1976 submitted by Shri Praveen Singh for setting aside ex parte order dated 27.12.1975 passed by the Prescribed Authority makes it clear that he had pleaded his continuous illness for ten months as the cause for his inability to file objection. In paragraph 2 of the application, Shri Praveen Singh made a suggestive assertion that he had no knowledge of the proceedings initiated by the Prescribed Authority and he came to know about the case having been decided ex parte only on 7.7.1976 when he went to Lekhpal to procure memo. There was not even a whisper in the application that notice dated 29.11.1975 issued by the Prescribed Authority under Section 10(2) of the Act had not been served upon him and on that account he could not file objections within 15 days. The application filed by Shri Praveen Singh was not supported by any medical certificate or other evidence which could prima facie establish that he was really sick for ten months. This is the reason why the Prescribed Authority refused to reconsider order dated 27.11.1975 and the Appellate Authority declined to entertain his prayer for

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remand of the case to the Prescribed Authority for the purpose of fresh determination of surplus area case. Notwithstanding this, in the writ petition filed before the High Court a misleading statement was made that due to serious illness, Shri Praveen Singh could not file objection and, as a matter of fact, he did not have any knowledge of the dates of proceedings which were conducted by the Prescribed Authority. In view of that statement, the learned Single Judge of the High Court felt persuaded to stay the orders passed by the Prescribed Authority and Appellate Authority which, as mentioned above, resulted in frustration of the action to be taken by the concerned authority for distribution of the surplus land to landless persons for a good period of more than eleven years and enabled the heirs of Shri Praveen Singh to retain possession of the surplus land and enjoy the same. Before the High Court also, no evidence was produced in support of the assertion regarding serious illness of Shri Praveen Singh. Insofar as this Court is concerned, Shri Sunil Kumar Singh, grandson of Shri Praveen Singh and son of the appellant, boldly made a false statement that his grandfather did not receive notice dated 29.11.1975 along with the statement of surplus land prepared under Section 10(1) and he could not file any show cause without going through the statement. We are amazed at the degree of audacity with which Shri Sunil Kumar Singh could make a patently false statement on oath.

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21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority.

22. In the result, the appeal is dismissed. We would have saddled the appellants with exemplary costs but, keeping in view the fact that possession of the surplus land was taken in 2002 and the same has been distributed among landless poor persons, we refrain from doing so.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
December 3, 2009

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kindly peruse page No - 81

CASE NO.:
Appeal (civil) 812 of 2002

PETITIONER:
VIJAY SYAL AND ANR.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT: 22/05/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 242

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL J. These appeals are directed against the common judgment and order dated 4.1.2001 passed by the Division Bench of the High Court. The controversy relates to selection/non-selection of candidates to the posts of Assistant District Transport Officer (for short 'ADTO'). The Punjab Subordinate Selection Board advertised 12 posts of ADTOs on 15.5.1995. Out of them, 7 posts were for the general category, 4 for SC/ST and one was reserved for Ex-servicemen. A written test was conducted on 24.3.1996, the result of which was declared on 1.4.1998, declaring 78 persons successful. Out of these 78 persons, 61 belonged to general category, 15 belonged to SC/ST category and 2 belonged to category of Ex-servicemen. Later, on 22.4.1998, 40 more candidates were declared successful by lowering the standard. Out of these 40 candidates, 21 belonged to general category, 13 to SC/ST category and 6 to Ex-servicemen category. Criteria for selection were framed on 22.4.1998; final result was declared on 15.5.1998 and the appointments were made on 18.5.1998. Out of the candidates selected and appointed, 6 were from the general category, 3 were from SC/ ST and 1 from Ex-servicemen category. Out of the 78 candidates whose result was declared on 1.4.1998, 4 candidates belonging to general category were selected. However, out of 40 candidates whose result was declared later, 2 candidates belonging to general category were selected. The appellants in these appeals approached the High Court by filing writ petitions for quashing the select list of the candidates published by the authorities in Tribune dated 23.5.1998, for issuing writ of mandamus directing the respondents to consider their claim on the basis of their merit from amongst the candidates originally invited for interview and to issue a writ in the nature of prohibition restraining the respondents from giving effect to the selection made. It may be mentioned here itself that the selected candidates were appointed on 18.5.1998 and having joined the services, they are continuing in service. The High Court considering the rival contentions on their relative merits and after perusing the records did not find any merit in the writ petitions. Consequently, they were dismissed by the impugned common order. Hence, these appeals.

Appellant No. 1 in Civil Appeal No. 812 of 2002 argued his case as party-in-person and submissions were made by the learned counsel on behalf of the other appellants. We may make it clear at the outset that none of the appellants belonged to the category of either SC/ST or Ex-servicemen and their claim is also not against these categories. Hence, we consider it unnecessary to consider the validity of selection of the candidates made in these two categories. In other words, we confine our consideration to the validity of selection of the candidates made in the general category. Mainly, the submissions made on behalf of the appellants were that after declaration of the result of the written examination on 1.4.1998, standard

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could not have been lowered for making other 40 candidates eligible for the purpose of interview; criteria could not have been framed after declaration of result of the written examination; maximum 21 candidates could have been called for interview in the ratio of 1:3 in the general category on the basis of the merit of the written examination whereas out of 78 candidates whose result was declared on 1.4.1998, more than 60 candidates were from the general category. In this regard, reliance was placed on Ashok Kumar Yadav and Ors. v. State of Haryana and Ors., [1985] 4 SCC 417.

Learned Additional Solicitor General and learned senior counsel for the respondents at the outset submitted that they have preliminary objection for the very entertaining of these appeals and considering the contentions advanced on behalf of the appellants on merits having regard to their conduct. According to them, the appellants made deliberate misrepresentation with regard to the allocation of marks stating that 150 marks were for the written test and 100 marks for interview. Further, mala fides were attributed to authorities on the basis of the relation and political influence, which they gave it up before the High Court but again reiterated in the SLPs. According to the learned counsel, these two grounds are good enough to dismiss the appeals by revoking leave granted without examining them on merits. Although, we find justification in these submissions but having heard the parties at length, we consider these appeals on the merits of the contentions as well. On behalf of the respondents, further submissions were made explaining the criteria fixed, in what circumstances, more number of candidates were called for interview and how the selection made was fair and proper. According to them, mere calling more number of candidates for interview did not vitiate the selection made having regard to the facts and circumstances of the case; at any rate, the appellants being lower in merit, even otherwise, could not get any benefit. According to the learned counsel for the respondents, the impugned judgment of the High Court is perfectly valid and justified. They also submitted that pursuant to the selection made, the selected non-official respondents have been continuing in service since May, 1998, i.e., they are continuing in service for about 5 years by now and as such these are not the fit cases for exercise of jurisdiction under Article 136 of the Constitution of India to interfere with the impugned judgment and order.

It is useful to reproduce the chart furnished at the time of hearing indicating names of candidates, their categories, qualification, marks obtained in written test as well as interview and the total marks:

C.A.NO.	Sr.	Name	List*	No.		Category		
Qualification	Marks	Written Test	Inter view	lest	Total			
812/02	1.	Umesh Kumar, Appellant	1		G	2(MA-II)		124
12 5	138.5							
	2.	Vijay Kumar, Appellant	1		G	3(MA-II)		126
	1 1 5	140.5						
	3.	Karanbir Singh, Resp.4	1		G	1 (Sports)		127
	2o5	148*5						
	4.	Gurinderjit Singh, Resp.5		I		G	-----	127
	19	146						
	5.	Tarlochan Singh,Resp.6	1		G	-----	124	71
	75	145.75						
	6.	Manjit Singh, Resp. 7	I		G	2(MA-I1)		123
	20.25	145.25						
	7	Gurcharan Singh. Resp 8	Angrej Singh. Resp .9			8	II	
	G II	G	I(NSS)	120 120 22.5		143.5 22.87	142.87	
	9.	Sukhwinder Kumar. Res. 101			SC		I(NSS/NCC)	
	121	19.37	141.37					
	10.	Dhien Singh. Resp. II		II	SC	2(MA)	119	
	19.5	140.5						
	11.	Karam Singh. Respt 12		1	SC		2(MA/LLB)	
	124	15.75	141.75					
	12.	Jaswant Singh, Respt.		13	11	SC	5(MA=2.	

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NCC-3) 114 21.5 140.5
5986/02 Zulfikar AM, Appl. 5985/02 Gurdeep Singh, Appl 937/02
Sarpinderjit Singh. Appl. 1 G I G 1 G
2(LLB) 122 122 128 12.25 136.25 14.25 136.25 11.5
141.50
2(MA)
Not selected but better than all the Appellants
Ram Nath 1 G 121 21.75 142.75
Paramjit Singh I G 123 19 142

---

*Note - The names of the candidates from among 78 candidates called for interview for the first time are shown as in List-I and names of the candidates from among 40 candidates called for interview are shown as in List-II.

In para 8 of the Writ Petition No. 7349 of 1998 filed by the appellant No. 1 in Civil Appeal No. 812 of 2002, it is averred that he came to know on inquiry that the entire selection had been made in a totally arbitrary and biased manner to help certain selected candidates; respondent No. 8 is the nephew of Shri Jasdev Singh Sandhu, Chairman of the respondent-Board; sister's husband of Harmail Singh, Minister for Public Works in the present Government is one of the selected candidates; Shri Angrej Singh, respondent No. 9 is politically very-well connected and is a close friend of sitting MLA. In order to help these persons who did not come within the first list, second list was issued. In para 10 of the writ petition, it is asserted that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) which is totally arbitrary. Thus, 40% marks have been allocated for interview as against 12.2%, which are permissible in law. In the replication to the written statement filed, in para 8, it is stated that relationship of respondent No. 8 with Shri Jasdev Singh Sandhu, the Chairman, is concerned, it is fairly conceded that this has been mentioned wrongly but not with mala fide intention. In the impugned judgment, the question of mala fide is not dealt with, obviously, in view of the replication filed by the appellants to the written statement before the High Court as noticed above. In the impugned judgment, the question of allocation of 100 marks for interview were excess, is also not dealt with as it does not appear to have been urged on behalf of the appellants. Criteria for selection were framed on 22.4.1998. The criteria for selection which was produced is Annexure-R-1 in the writ petition before the High Court clearly indicated total marks for selection 240, out of them 200 marks were allocated lor competitive test, 15 marks for additional educational, sports and oilier qualifications and 25 marks were allocated for interview. The appellants were very much aware of Annexure R-l. The impugned order shows that the grievance of the appellants was in regard to the publication of the criteria, subsequent to declaration of the result of written examination; not that 100 marks allocated for interview were excessive. With all this, it is painful to note that the appellants in Civil Appeal No. 812 of 2002 on page K of List of dates stated that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) It is further stated that the selection has been made in totally biased manner as the nephew of the Chairman of the respondent-Board, the sister's husband of the Minister for Public Works and a friend of known political families in Punjab, have been appointed. It may be stated here itself that those persons were neither made parties nor any particulars were given touching mala fulcs. At page 34 of SLP in paras K and L, same things are repeated as to the allotment of 100 marks for interview and also mala fides attributed to certain persons to accommodate the private respondents. It is further stated that arbitrarily 100 marks were set apart for interview out of 250 marks in order to help them only and that the entire selection was arbitrary. This is also the state of affairs even with regard to the other appellants in other appeals At the hearing when pointed out, the appellants regretted for the wrong statements and misrepresentation made but added

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that they were not with any mala fide intention. Looking to the background, specific statements made in the replication filed by the appellant before the High court, being aware of the criteria that the marks for interview were only 25, having given up mala fides and having not urged the same before the High Court and taking note that the appellants have sworn affidavits in support of the SLPs that they understood the accompanying synopsis, list of dates and paragraphs contained in Special Leave Petitions and that they were fully conversant with the facts of the case and that the contents of the affidavit were true to their knowledge and nothing material has been concealed there from and no part of it is false, we find it difficult to accept that the statements were made in the SLPs bonafidely. It appears to us that these statements were made in SLPs to get leave and/or interim orders on the ground of excessive marks allocated for interview and mala fides. In our view, this conduct of the appellants is condemnable and we may straightaway say without any hesitation that they have disentitled themselves for any relief on this score.

A bench of three learned Judges of this Court in Hari Narain v. Badri Das, [1964] 2 SCR 203 revoked the special leave granted to the appellant and dismissed the appeal for making inaccurate, untrue and misleading statement in SLP observing that "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with application for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

Again in Rajabhai Abdul Rehman.Munshi v. Vasudev Dhanjibhai Mody, [1964] 3 SCR 480, this Court observed that "exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal."

In the same judgment, Hidayatullah, J. concurring with judgment of Shah J. delivered on behalf of himself and Sarkar J., added that "I have considered the matter carefully. This is not a case of a mere error in the narration of facts or of a bona fide error of judgment which in certain circumstances may be considered to be venial faults. This is a case of being disingenuous with the Court by making out a point of law on a suppositious state of facts, which facts, if told candidly, leave no room for the discussion of law. The appellant has by dissembling in this Court induced it to grant special leave in a case which did not merit it. I agree, therefore, that this leave should be recalled and the appellant, made to pay the costs of this appeal."

Yet again, a bench of three learned Judges of this Court in Udai Chand v. Shanker Lal and Ors., [1978] 2 SCR 809 revoked the special leave and dismissed it after referring to the decisions in Hari Narain and Rajabhai Abdul Rehman Munshi (supra). It was further observed that this Court cannot permit abuses of the process of law and of law courts.

However, even otherwise we proceed to examine on the merits of the contentions urged on either side at length and with all seriousness.

From the chart extracted above in regard to the marks secured by the appellants and the respondents, it is evident that respondents 4-7 (in general category) were in the first list i.e. they were from out of the 78 candidates. The appellants cannot make grievance as far as these candidates are concerned in the sense that they were in the first list and not in the second list so as to give them advantage. No doubt, respondents 8 and 9 (in general category) were called for interview in the second list out of 40 candidates. Admittedly, the marks secured by these respondents are more than any of the appellants in the general category. It is pointed out that the two candidates namely Ram Nath and Paramjit Singh in general category called in the first list of the interview have secured more marks than all the appellants. Even if the respondents 8 and 9 were to be denied appointment on the ground that they were called for the interview in the second list, the position of the appellants could not improve. One more fact to be kept in mind is that two candidates belonging to Scheduled Castes category having secured higher marks than the appellants could be selected in the general category. Thus, even otherwise, the appellants would not succeed in getting selected for appointments. Merely because 40 more candidates were called for interview without anything more, selection of the candidates does not get vitiated particularly so when malafides were given up and 100 marks were not allocated for interview as wrongly stated by the appellants.

As can be seen from the difference of marks secured by the candidates in interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in interview so as to give an advantage or march to an undeserving candidate of their over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

The appellants heavily relied on a decision of this Court by four learned Judges in Ashok Kumar Yadav's case (supra) in support of their contentions that where there is a composite test consisting of written examination followed by viva voce test, the number of candidates to be called for interview on the basis of marks obtained in the written examination should not exceed twice or at the highest thrice the number of vacancies to be filled; further marks allocated to viva voce test should not be more than 12.2%. The learned counsel for the respondents from the very judgment

pointed out that it does not advance the case of the appellants having regard to the facts and circumstances of the cases at hand. In the aforementioned case of Yadav. the facts were that in October, 1980. Haryana Public Service Commission (HPSC) invited applications for recruitment to 61 posts in Haryana Civil Service (Executive) and Allied Services. The recruitment was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 as applicable in the State of Haryana. In response to that advertisement issued by HPSC, about 6000 candidates applied for recruitment and appeared at the written examination. Out of them, over 1300 obtained more than 45% marks and were called for interview. HPSC invited all the 1300 and odd candidates for interview and the interviews lasted for almost half a year. Though originally, applications were invited for recruitment to 61 posts, the number of vacancies during the time taken in the written examination and viva voce test rose to 119. It seems there were some candldates who had obtained very high marks at the written examination but owing to securing poor marks in the viva voce test, they could not come within first 119 candidates and consequently they were not selected. Aggrieved by the non-selection, they filed writ petitions in the I High Court challenging the validity of the selection. It was contended that the marks given in the viva voce test should be ignored and selection should be made only on the basis of the marks obtained by the candidates at the written examination. The writ petitions were allowed by the Division Bench of the High Court. Hence, the appeals were filed before this Court aggrieved by the judgment of the High Court. The High Court took the view that there was reasonable likelihood of bias vitiating the selection process based on the fact that though only 61 vacant posts were advertised over 1300 candidates representing more than 20 times the number of available vacancies were called for viva voce test. The Division Bench pointed out that in order to have proper balance between the objective assessment of a written examination and the subjective assessment of personality by a viva voce test, the candidates to be called for interview at viva voce test should not exceed twice or at the highest, thrice the number of available vacancies. Since the candidates were called 20 times the number of available vacancies, the High Court held that the selection process was vitiated. This Court disagreed with this conclusion reached by the Division Bench of the High Court. While doing so, this Court observed that HPSC was not right in calling for interview all the 1300 and odd candidates; it was difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried if over 1300 candidates were to be interviewed for recruitment to a service if viva voce test was to be carried out in a thorough and scientific manner, to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes. This Court, while considering the question whether selection made by HPSC after calling 1300 candidates for interview was vitiated on that account, in paragraph 21, held thus:-

"We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relief on the comparative figures of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have

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deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in the viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is painly and indoubtably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from only three candidates, namely Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C.Marya, there was no other candidate in whom the Chairman or any members of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and member of the Haryana Public Service Commission in fact belonged to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias."

In that case the marks allocated for viva voce test came to 22 2% of the total number of marks kept for the competitive examination. This percentage of 33.3% was in the case of Ex-service officers and 22.2% was in the case of other candidates.

As regards the allocation of marks for interview, in paras 23 and 24 of the same judgment it is stated thus:-

"23. This Court speaking through Chinnappa Reddy, J pointed in Lila Dhar v. State of Rajasthan, [1982] 1 SCR 320 that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the

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matters are more appropriately left" to the wisdom of the experts. It is not for the court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments, where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly height percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiate, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."

Even having found allocation of 22.2% marks for viva voce test were unreasonable and excessive, selection was not upset as stated hereunder:-

"28. But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Set vice (Executive Branch) Rules, 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardized. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test."

This Court in Ashok Kumar Yadav's case, aforementioned, found allocation of 12.2% marks for viva voce test was fair and just and in that view directed that marks allocated for the viva voce test shall not exceed 12 2% of the total marks taken into account for the purpose of selection. Even judged by this standard in the present appeals, the marks allocated for viva voce test being 25 as against total marks of 240 are less than 12.2% i.e. well within the ambit of direction given. In that case, this Court declined to exercise discretion to set aside the selection made by the HPSC after the lapse of 2 years taking note that the selected candidates had already been appointed to various posts.

In All India State Bank Officers' Federation and Ors. v. Union of India and

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Ors., [1997] 9 SCC 151, this Court observed, "there can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case Decisions of this Court show that no rigid rule, relating to percentage of marks lor interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection."

This Court in a recent decision in Jasvinder Singh and Ors. v. State of J&Kand Ors., [2003] 2 SCC 132, after referring to earlier decisions, pointed out that the very observations made in Ashok Kumar Yadav's case show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases; what ultimately is required to be ensured is as to whether the allocation as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Para 7 of the said judgment reads:-

"7. In Mehmood Alam Tariq v. State of Rajasthan, [1988] 3 SCC 241, prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In Manjeet Singh v.ESI Corpn.. [1990] 2 SCC 367 this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In Anzar Ahmad v. State of Bihar, [1994] 1 SCC 150 this Court exhaustively reviewed the entire case law on the subject including the one in Ashok Kumar Yadav case and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. The very observations in Ashok Kumar Yadav case would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view, has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the decision in Ashok Kumar Yadav case. Further, the learned Single Judge appears to have applied the ultimate decision in the said case. to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, there for."

The observations made in para 8 of the same judgment in somewhat similar circumstances which have negative impact on the contentions urged on behalf of the appellants are:-

"8. The learned single Judge also seems to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in the written test as compared to some who scored higher marks in the written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances tan not provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test and also and the expert opinion about as well as experience in viva voce does not lend credence to any such

general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-a-vrs those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case I here was no specific allegation of any mala fides or bias against the Hoard constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot he said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates of all those who have obtained 56 marks in the written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference."

In Civil Appeal No. 937 of 2002 the learned counsel for the appellant urged an additional ground that 5 marks fixed for higher educational qualifications were not given to the appellant. According to him the appellant had additional qualifications of M.A. and LL.B.; he ought to have been given additional marks for M.A. as well as LL.B., but only 2 marks were given for both the qualifications together, which affected his chance of selection. It appears that this point was not urged before the High Court and no opportunity was available to the respondents to meet this point. However, during the course of hearing, based on the criteria fixed for selection, it was explained to us by the learned counsel for the respondents that for additional educational qualifications 5 marks were set apart. Out of them maximum marks available to the highest educational qualification of a candidate were to be given and not that marks were to be given to every additional educational qualification. It is better to look at the criteria, which was filed as Annexure R-1 in the writ petition, which is reproduced hereunder: -

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"ANNEXURE R-1

CRITERIA/FORMULA ADOPTED FOR SELECTION OF CANDIDATES FOR THE POST OF NAIB TEHSILDAR BY THE SUBORDINATE SERVICES SELECTION BOARD, PUNJAB

Total marks for selection			240
(i) marks allotted for competitive test		200	
(ii) Marks allotted for Additional Educational, sports and other Qualifications		15	
(iii) Marks allotted for interview/ (VIVA-VOCE)		25	
I. A. Marks allotted for Educational Qualification (for additional Qualification)			5
(i) Ph.D.		5	
(ii) M.A./M.Sc./M.Tech and other post graduate degrees			
1st Division	3		
2nd Division and 3rd Division	2		
(iii) LL.B.		2	
(iv) Any other qualification	1		

Note: The candidate will be given the marks on the basis of his/her highest

qualification and not on the basis of his/her each qualification lower than this.

II. B. SPORTS/EXTRA CURRICULAR ACTIVITIES 5

(i) Sports

International winner 5

National winner 3

State winner 2

(ii) N.C.C. 3

C Certificate 3

B Certificate 2

A Certificate I

(iii) N.S.S.

2

One camp 1

Two or more camp 2

III. INTERVIEW

Interview marks of the Board will be 25 and the system for awarding the marks would be same as approved separately for all categories.

Sd/-

(Jasdev Singh Sandhu) Chairman

14.1.1999

Sd/- Sd/-

(Kulbir Singh Randhawa) (Ashok Loomba)

Member Member

Sd/- Sd/-

(Parkash Singh Gardhiwal) (Virsa Singh Valioha) Member

Member

Sd/-

(Jarnail Singh Wahid) Member"

From Annexure R-1 it is clear that total marks for selection were 240. Marks allocated for competitive test were 200, marks allocated for additional educational, sports and other qualifications were 15 and marks allocated for interview (Viva voce) are 25. Marks allocated for educational qualifications are 5 and maximum marks are 5 for Ph.D., for post graduation in first division 3 marks, for second and third divisions 2 marks, for LL.B. 2 marks and any other qualification 1 mark. If the argument of the learned counsel for the appellant is to be accepted, it may result in anomalous situation. Suppose, a candidate, who possesses three additional qualifications including Ph.D., in that event he would be entitled 5 marks for Ph.D. and additional marks for every additional educational qualifications. Then the total marks to be assigned to a candidate for the educational qualifications shall be more than 5 marks. In the case of the appellant, although he had two additional educational qualifications, the maximum marks to which he was entitled for highest qualification were given. Hence he cannot make any grievance. This being the position, we do not find any merit in the contention. Hence it is rejected.

In Civil Appeal No. 5985 of 2002 it was urged that no marks were given to the appellant for additional educational qualifications. It appears that this point also was not raised before the High Court and similarly no opportunity was available to the respondents to meet the point. The learned counsel for the appellant contended that the appellant had additional post graduation qualification and no marks were given to him. It was brought to our notice by showing the original record that in the application form no mention was made about additional post graduation qualification acquired by the appellant and no record or certificate was placed before the authorities at appropriate time to show that the appellant had acquired additional qualifications. Hence the contention has no merit and consequently it is rejected.

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In these appeals, the non-official respondents having been appointed in May, 1998, are continuing in service almost for a period of five years. On this ground as well as looking to the conduct of the appellants in making misrepresentation to this Court and finding no merit in these appeals, we should decline to interfere with the impugned judgment and order. It may be noted that even in the Ashok Kumar Yadav 's case (supra) this Court set aside the judgment of the Division Bench of the High Court by rejecting the challenge to the validity of the selection made by the HPSC.

In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.

Before we part with these cases, we must observe that the misrepresentation made by the appellants in the SLPs supported by an affidavit require serious action but we refrain from taking any further action in view of the apology and regret expressed by the appellants during the hearing. But, we administer a warning to them to be careful in future and not to make any misrepresentation or false statement before any court and impose cost also.

For the reasons stated and discussion made above, these appeals are dismissed but with cost of Rs.10,000/- (Rs. 5000 to be paid by each of the appellants) in Civil Appeal No. 812 of 2002 and Rs. 5,000 in each one of the remaining appeals to be paid by the appellants which amount shall be deposited with the Legal Aid Committee of the Supreme Court.

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kindly peruse page No-88

CASE NO.:
Appeal (civil) 5097-5099 of 2004

PETITIONER:
A.V. PAPAYYA SASTRY & ORS

RESPONDENT:
GOVERNMENT OF A.P. & ORS

DATE OF JUDGMENT: 07/03/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

C.K. THAKKER, J.

All these appeals have been preferred by the appellants against common judgment and order passed in WAMP No. 1879 of 2001 in W.A. No. 109 of 1997, WAMP No. 1880 of 2001 in W.A. No. 292 of 1998 and Contempt Case No. 1008 of 2001. By the said order, the High Court recalled common judgment and order passed on April 27, 2000 in Writ Appeal Nos. 109 of 1997 and 292 of 1998. A direction was also issued to the authorities under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Ceiling Act') to complete proceedings within the stipulated period.

The case has a long and checkered history starting from early seventies of the last century. Appellants herein are the owners of land bearing Survey Nos. 3/1, 3/2 and 4 admeasuring 18 acres, 39 cents of Village Kancharapalem, District Visakhapatnam. It was their case that Visakhapatnam Port Trust ('Port Trust' for short) wanted to acquire land for public purpose, namely, for construction of quarters for its employees. The Chairman of the Port Trust, therefore, sent a requisition letter to the District Collector, Visakhapatnam for acquiring land admeasuring 45 acres, 33 cents of Survey Nos. 1, 2, 3 and 4 of Kancharapalem Village. Advance possession of the land of the appellants, bearing Survey Nos. 3/1, 3/2 and 4 admeasuring 18 acres, 39 cents was taken over by the Estate Manager of the Port Trust on August 29, 1972 by private negotiations. The State Authorities, thereafter, were requested by the Port Trust Authorities to take appropriate proceedings for acquisition of land under the Land Acquisition Act, 1894. According to the appellants, in the statement recorded on August 29, 1972, Akella Suryanarayana Rao stated that he had handed onver possession of the land to the Estate Manager of the Port Trust. Mr. Akella also stated that there was a dispute regarding land with tenant Koyya Gurumurthy Reddy under Andhra Pradesh Lands Tenancy Act. It was also the case of the appellants that the Port Trust deposited with the Government the amount of compensation payable to the owners of the land. The land acquisition proposals were approved by the Port Trust as also by the Government of India.

It was further case of the appellants that a preliminary notification under sub-section (1) of Section

4 of the Land Acquisition Act was for the first time issued on August 10, 1973 but nothing further was done in the matter. The Ceiling Act came into force in the State of Andhra Pradesh on February 17, 1976. It, inter alia, covered the Visakhapatnam Urban Agglomeration. The appellants filed their declarations taking the stand that possession of land had already been handed over to Port Trust Authorities even before the Act came into force and the provisions of the Ceiling Act, therefore, would not apply to such land. In the light of the above factual position and the case of the appellants, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam vide his order dated May 25, 1981 in C.C. No. 6143 of 1976 declared that the land-owners of Survey Nos. 3/1, 3/2 and 4 were 'non-surplus land holders'. Then the Government again issued notification under sub-section (1) of Section 4 of the Act on August 29, 1981. Urgency clause under Section 17(4) was not invoked since the possession of land was already with the Port Trust Authorities. A declaration under Section 6 was issued on October 12, 1982. No award, however, was passed.

According to the appellants, the Chief Engineer of Port Trust in reply to a query by the Land Acquisition Officer, clarified vide his letter dated December 19, 1985 that actual and physical possession of the land was not taken by Port Trust as the tenant did not vacate possession of the land. It appears that in view of the above letter that physical possession of land was not with the Port Trust Authorities, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam referred the matter to the Commissioner, Land Reforms and Urban Land Ceiling, Government of Andhra Pradesh, Hyderabad in February, 1987 to take up the matter under Section 34 of the Ceiling Act in suo motu revision. The Collector, Visakhapatnam also vide his D.O. letter No. 433/78, dated June 27, 1987 requested the Commissioner to reopen the case and start enquiry. On August 21, 1989, Chairman, Visakhapatnam Port Trust addressed a letter to the Commissioner, Land Reforms & Urban Land Ceiling, Government of A.P. categorically stating that land admeasuring 18 acres, 39 cents of Survey Nos. 3/1, 3/2 and 4 of Kancherapalem village had already been taken over by the Port Trust and there was no cause to reopen the case under Section 34 of the Ceiling Act. Once again, the Government approved the proposal for acquisition of land and notification under Section 4(1) of the Land Acquisition Act was issued on May 17, 1991.

It appears that the proceedings for reopening of the case by invoking Section 34 of the Ceiling Act were initiated. On July 20, 1994, notice was issued to the owners to show cause as to why revisional powers should not be exercised and the order passed by the Special Officer and Competent Authority under the Ceiling Act should not be set aside. It was also stated in the notice that it was brought to the notice of the Government that title to the land was undisputedly with the declarants on the appointed day under the Ceiling Act as the Land Acquisition Proceedings were not concluded by that date. As such land was required to be computed in the holdings of the declarants even if it was admitted by the Port Trust Authorities that they were in possession of the land in 1972. The land-owners submitted the reply to the notice.

Meanwhile, however, the land-owners filed a petition being Writ Petition No. 11754 of 1994 praying therein that the High Court may direct the State Authorities to complete proceedings under the Land Acquisition Act and pass an award. During the pendency of the writ petition the revision was allowed by the State Government under Section 34 of the Ceiling Act on January 20, 1995 and the order passed by the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam declaring that the appellants had no surplus land had been set aside. The appellants, therefore, filed another petition, being Writ Petition No. 3102 of 1995 questioning the legality of the order passed in revision. The learned single Judge allowed both the petitions i.e. Writ Petition Nos. 11754 of 1994 and 3102 of 1995 and by order dated June 4, 1996 directed the authorities to complete Land Acquisition Proceedings and pass award within three months. The learned single Judge also held that the order under the Ceiling Act was passed by the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam in 1981 while suo motu revisional powers were exercised in 1994-95 i.e. after thirteen years. Such action was, therefore, illegal, unlawful and unwarranted. Accordingly, the order passed in revision was set aside. Writ appeals filed by the State were dismissed. A direction was issued by the Division Bench to fix market value on the basis of notification under Section 4(1) issued on May 17, 1991. Special Leave Petition (Civil) Nos. 14860-14861 of 2000 filed by the State Authorities were dismissed by this Court on October 20, 2000.

The State Authorities, thereafter, filed recall-applications on June 13, 2001. In the recall applications, it was stated inter alia that fraud was committed by the land-owners and material facts were suppressed by them. It was alleged that possession of land was never handed over to Port Trust Authorities, nor Port Trust Authorities received such possession of land and yet it was asserted by the owners that possession of land was given to Port Trust Authorities in 1972 which was not correct. It was only in December, 1985 that the correct fact came to the knowledge of the State Authorities from a letter by the Chief Engineer of Port Trust. Hence, the order was taken in suo motu revision under Section 34 of the Ceiling Act. It was further stated that even if the Port Trust Authorities would be deemed to be in possession of land on the day the Ceiling Act came into force, Land Acquisition Proceedings were not concluded and no award was passed. The Port Trust Authorities, in the circumstances, would be in possession of the land for and on behalf of the land-owners and the land was required to be declared surplus and vacant under the Ceiling Act.

It was further averred that the High Court ordered inquiry by the Central Bureau of Investigation (CBI) and Mr. Y. Anil Kumar, IPS, Superintendent of Police, CBI, Visakhapatnam submitted a detailed report in the High Court when the Writ Appeals were placed for hearing. Unfortunately, however, the attention of the Court was never invited to the said report which clearly revealed that there was total fraud on the part of the land-owners in collusion with Port Trust Officers as also Officers acting under the Ceiling Act. It was, therefore, submitted that the orders passed by the Division Bench on April 27, 2000 was required to be recalled by directing the

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authorities under the Ceiling Act to conclude proceedings.

The High Court, after hearing the learned counsel for the parties and considering the records and proceedings including the report submitted by CBI, held that the case was of a fraud and by suppressing material facts, several orders were passed and actions were taken. In view of correct and true facts and reports which clearly established that the authorities were misled, that proceedings were initiated to revise the order, dated May 25, 1981. The Court, therefore, held that the order dated April 27, 2004 passed by the Division Bench was required to be recalled and recall applications were allowed.

The Court therefore passed the following order;

"Considering all the aspects as stated above, we are of the considered view that the recall petitions have to be allowed. Accordingly we allow the recall petitions by setting aside the common judgment passed in the aforesaid writ appeals.

We further direct that the proceedings under ULC Act have to be completed within a period of one month from the date of receipt of this order by the concerned authorities by giving opportunity to the petitioners and respondents herein to put forward their cases and after final decision is taken by the authorities under ULC Act, the further proceedings have to be initiated under Land Acquisition Act depending upon the result under the ULC Act. The proceedings under the Land Acquisition Act if initiated, compensation to be awarded to the respondents herein within a period of three months from the date of order of the authorities under the ULC Act. The Land Acquisition Officer is also directed to consider the legal date of possession of the land taken by the VPT Authorities after conclusion of the enquiry under the ULC Act".

The appellants have challenged the aforesaid order of the High Court. On August 5, 2002, notice was issued by this Court. Affidavits and counter affidavits were filed. On August 6, 2004, leave was granted and hearing was expedited and the matters were placed before us for final hearing.

We have heard learned counsel for the parties.

Mr. K.K. Venugopal, Senior Advocate, appearing for the appellants contended that the High Court committed an error in law in passing the impugned order. It was clear from the evidence on record and various communications that before the proposal was submitted by the Port Trust Authorities for acquisition of land for a public purpose (construction of quarters for its employees), advance possession of land had been taken over by Port Trust Authorities and land-owners were not in possession of the property. The said fact was noted by the Special Officer and Competent Authority, Urband Land Ceiling, Visakhapatnam and an order was passed in May, 1981 that the appellants were 'not surplus land owners'. In or about 1985, however, there appeared to be encroachment over the land and some officers of the Port

Trust, with a view to save their skin, wrote a letter on December 19, 1985 that the possession of land had not been handed over to Port Trust Authorities since tenants were occupying the land. The said statement was not correct and could not have been considered for initiating proceedings under the Ceiling Act. It was also submitted by the counsel that suo motu power was sought to be exercised after a decade. As per settled law, revisional powers should be exercised within 'reasonable time'. By no stretch of imagination, more than ten years can be said to be 'reasonable time'. According to the learned counsel, learned single Judge was wholly justified in allowing both the writ petitions filed by the land-owners and in issuing directions, namely, (i) to complete land acquisition proceedings and pass award; and (ii) exercise of revisional powers after about thirteen years was wholly unwarranted. The said order was confirmed by the Division Bench in Writ Appeals. Special Leave Petitions were also dismissed by this Court. After dismissal of Special Leave Petitions, neither it was open to the authorities to make an application for recalling earlier orders as has been done in June, 2001, nor it was permissible for the Court to grant such relief. It was also submitted that the Division Bench, while dealing with Writ Appeals took note of the fact that the land was 'agricultural land' and was having fruit bearing trees i.e. a garden land. The said finding had not been disturbed even by this Court in SLPs. The Division Bench ought to have taken into account that fact as well. By not doing so, an illegality had been committed and the order deserves to be set aside.

The learned counsel for the State Authorities as also Port Trust Authorities supported the order passed by the High Court and action of recalling of the order dated April 27, 2000. It was submitted that the authorities proceeded on the basis that advance possession of the land was given by land-owners to Port Trust Authorities in August, 1972. But the statement was not correct and the authorities were misled. The order passed by the Special Officer and Competent Authority under the Ceiling Act declaring that the owners did not possess surplus land was founded on the above statement that the land-owners were not in possession of land, which was false. But even otherwise, the order passed by the Special Officer and Competent Authority was not in consonance with law inasmuch as even if the owners were not in possession of land, proceedings under the Land Acquisition Act were not finalized. The legal position is that the ownership of the land-owners continued and in the eye of law, Port Trust Authorities remained in possession for and on behalf of the land-owners. It was, therefore, incumbent on Special Officer and Competent Authority under the Ceiling Act to declare land to be excess and surplus under the Ceiling Act so that appropriate consequential action could be taken. No such action, however, was taken. Moreover, it was made clear by the Chief Engineer, Port Trust vide his letter dated December 19, 1985 that actual and physical possession of land was never taken by Port Trust Authorities as it remained with tenants and disputes were going on. The matter, therefore, required detailed investigation.

The CBI made an enquiry and the report was submitted by the Police Inspector which revealed startling facts. From the report, it is clear that fraud was

ANNEXURE-R-16/2

committed by the land owners in collusion with officers of the respondents. Criminal proceedings were also initiated and they are pending. It was, therefore, submitted that the High Court was right in recalling its earlier order.

Regarding non-applicability of the provisions of the Ceiling Act as the land being garden land and hence agricultural land under the Ceiling Act, it was submitted that it was never the case of the land-owners when proceedings under the Ceiling Act had been initiated that the Act would not apply because the land was used for agriculture. The sole ground put forward by the land-owners was that possession of land had already been given to Port Trust Authorities and hence the Ceiling Act had no application. It was, therefore, submitted that the appeals deserve to be dismissed and the impugned order calls for no interference.

Having given anxious consideration to the rival contentions of the parties, in our opinion, no case has been made out by the appellants for interference with the order passed by the High Court allowing the applications and recalling earlier order. The High Court has considered the matter in detail. The case of land-owners was that advance possession was taken over by Port Trust Authorities in August, 1972. The subsequent facts and letter by Chief Engineer of Port Trust in 1985 clearly revealed that it was not so. Possession of land was never with the land owners and was not given to Port Trust Authorities. From the record it is clear that neither the land-owners nor the Port Trust Authorities were in actual or physical possession of land, but it was occupied by tenants and disputes were also going on between the tenants and land owners. Therefore, the basis on which the Special Officer and Competent Authority, Urban Land Ceiling proceeded to decide the matter was non-existent and non est.

In our opinion, the learned counsel for the respondents are also right in submitting that even if the statement of land-owners and Port Trust Authorities is believed and it is held that actual and physical possession of land was handed over by land-owners and taken over by Port Trust Authorities, it does not change the legal position. It was not the case of land-owners themselves that proceedings under the Land Acquisition Act were finalized and award was passed. From the record, it is clear that no notification under the Land Acquisition Act was issued in 1972. Such notifications were issued subsequently in the years 1973, 1981, 1991 and 1996. At more than one occasion, notifications were issued only because the proceedings were not finalized and award was not passed. It is also clear that in the writ petitions filed by the land-owners in 1994-95, a single Judge of the High Court directed the authorities to complete land acquisition proceedings by initiating fresh action commencing from issuance of notification under Section 4(1) of the Act and to complete them within a period of three months. In our opinion, therefore, the High Court was right in holding that the provisions of the Act would apply to the land and Special Officer and Competent Authority, Urban Land Ceiling was wholly wrong in excluding the land said to have been in possession of the Port Trust Authorities.

We are further of the view that the State Government, in the facts and circumstances of the case, was right in exercising revisional jurisdiction under

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Section 34 of the Act. Mr. Venugopal is indeed right in submitting that even though no period of limitation is prescribed for exercise of revisional jurisdiction by the State Government suo motu, such power must be exercised within a reasonable time [vide State of Gujarat v. Patel Raghav Natha, (1969) 2 SCC 187]. But taking into account the facts and circumstances in their entirety and in particular, a letter of Chief Engineer, Visakhapatnam Port Trust of December 19, 1985, it cannot be said that the power had not been exercised within a reasonable period. It is also pertinent to note that the subsequent development shows as to how some of the Officers of the Port Trust were parties to fraud said to have been committed by land-owners. In this connection, the respondents are right in inviting our attention to a letter dated August 21, 1989 by the Port Trust Authorities to the Commissioner of Land Reforms stating therein that the Government intended to exercise suo motu power under Section 34 of the Act but there was no necessity to reopen proceedings and suitable directions were required to be issued to District Collector, Visakhapatnam to pass an award in respect of land sought to be acquired under the Land Acquisition Act. In view of these developments, in our opinion, the High Court was fully justified in recalling the earlier order.

The High Court has dealt with the contention regarding fraud said to have been committed by land-owners in collusion with officers of the respondents. It is stated as to how the High Court ordered CBI enquiry on prima facie satisfaction that there was a fraud and report was submitted by Mr. Y. Anil Kumar, IPS, Superintendent of Police, CBI, Visakhapatnam. In the said report, CBI had stated that possession was never taken over by the Port Trust Authorities and tenancy cases were pending. Even if there was transfer of possession, it was in violation of the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 which came into force on June 5, 1972. (It may be recalled that according to the land owners as well as Port Trust Authorities, possession was taken over by the Port Trust by private negotiations on August 29, 1972). CBI, therefore, observed that transfer of possession in favour of Port Trust did not constitute legal transfer under 1972 Act. CBI also noted that proceedings under the Andhra Pradesh Tenancy Act were pending.

Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order \027by the first Court or by the final Court\027 has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

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"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on

falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".
(emphasis supplied)

The Court proceeded to state: "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party".
The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".
In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888, this Court stated;
"The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".
(emphasis supplied)

In United India Insurance Co. Ltd. v. Rajendra Singh & Ors., (2000) 3 SCC 581 : JT 2000 (3) SC 151, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.
Allowing the appeal and setting aside the orders, this Court stated;
"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file

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a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice".

(emphasis supplied)

Mr. Venugopal, no doubt, contended that when the order passed by the earlier Division Bench was not interfered with by this Court and SLPs were dismissed, it was not open to the High Court thereafter to entertain recall-applications and grant the relief of recalling of earlier orders. According to him, such an exercise of power was unlawful and abuse of process of law.

In this connection, our attention has been invited by the learned counsel to a decision of this Court in Abbai Maligai Partnership Firm & Anr. v. K. Santhakumaran & Ors., (1998) 7 SCC 386 : JT 1998 (6) SC 396. In that case, after dismissal of Special Leave Petition by this Court, review petition was entertained by the High Court and earlier judgment was recalled. When the matter reached this Court, setting aside the order passed by the High Court, the Court observed:

"The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the self-same order had been dismissed by this court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned single Judge at that stage is subversive of judicial discipline. The High Court was aware that SLPs against the orders dated 7.1.87 had already been dismissed by this court. This High Court, therefore, had no power or jurisdiction to review the self same order,

which was the subject matter of challenge in the SLPs in this court after the challenge had failed. By passing the impugned order on 7.4.1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this court, abused the process of the court and indulged in vexatious litigation. We strongly depricate the manner in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this court." (emphasis supplied)

The respondents, on the other hand, placed reliance upon Kunhayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359 : JT 2000 (9) SC 110, wherein this Court had an occasion to consider the application of the doctrine of merger to orders passed by this Court while exercising jurisdiction under Article 136 of the Constitution. The Court there observed that exercise of jurisdiction by this Court under Article 136 is in two stages; (i) granting of a special leave to appeal; and (ii) hearing of appeal. The Court went on to observe that the doctrine of merger does not apply to first stage i.e. at the stage of granting of special leave to appeal. It applies only at the second stage of hearing of appeals. The Court in the light of above position, laid down the following principles:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing,

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modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties,

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule (1) of Order 47 of the C.P.C.

In Kunhayammed, Abbai Maligai was considered and it was observed that in the facts and circumstances of that case, this Court did not approve the order passed by the High Court. The Court noted that in Abbai Maligai, this Court did not consider the doctrine of merger. According to the Court, a careful reading of Abbai Maligai "brings out the correct statement of law and fortifies us in taking the view" as taken. [see also S. Shanmugavel Nadar v. State of T.N. & Anr., (2002) 8 SCC 361 : JT 2002 (7) SCC 568].

The matter can be looked at from a different angle

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as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior.

Hence, the argument of Mr. Venugopal cannot be upheld. Even if he is right in submitting that after dismissal of SLPs, the respondent herein could not have approached the High Court for recalling its earlier order passed in April, 2000 and the High Court could not have entertained such applications, nor the recalling could have been done, in the facts and circumstances of the case and in the light of the finding by the High Court that fraud was committed by the land-owners in collusion with the officers of the Port Trust Authorities and Government, in our considered view, no fault can be found against the approach adopted by the High Court and the decision taken. The High Court, in our opinion, rightly recalled the order, dated April 27, 2000 and remanded the case to the authorities to decide the same afresh in accordance with law.

Mr. Venugopal also submitted that the Division Bench of the High Court in an order dated April 27, 2000 observed that the land being a garden land having fruit bearing trees which had been cultivated by a tenant, it did not fall within the description of 'urban land' or 'vacant land' within the meaning of Section 2(o) or 2(q) of the Ceiling Act and the said aspect had not been gone into at all by the State Government. The High Court thereafter considered the provisions of the Ceiling Act and held that the land was agricultural land and required to be excluded from the operation of the Ceiling Act.

As to the above, we may only observe that it was never the case of land-owners while filling a form under Section 6 of the Act that the provisions of the Act were not applicable to the land in question because the land was used for agriculture or horticulture purposes or that it was having fruit bearing trees. The exclusion or non-operation of the Act was sought only on the ground that the possession of the land had already been handed over to Port Trust Authorities in 1972 and hence the land cannot become subject matter of the Ceiling Act. In view of the above fact, in our opinion, the High Court was

right in passing the impugned order directing the authorities to consider all aspects and pass an appropriate order in accordance with law.

Last but not the least. We are exercising jurisdiction under Article 136 of the Constitution. It is discretionary and equitable in nature.? Clause (1) of the said Article confers very wide and extensive powers on this Court to grant special leave to appeal against any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in India. The Article commences with a non-obstante clause, "Notwithstanding anything in this Chapter" (i.e. Chapter IV of Part V). These words are of overriding effect and clearly indicate the intention of the Framers of the Constitution that it is a special jurisdiction and a residuary power unfettered by any statute or other provisions of Chapter IV of Part V of the Constitution. It is extraordinary in its amplitude. Its limit, when it chases injustice, is the sky. Such power, therefore, may be exercised by this Court whenever and wherever justice demands intervention by the highest Court of the country.

Article 136, however, does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

In Baiganna v. Deputy Collector of Consolidation, (1978) 2 SCR 509 : (1978) 2 SCC 461; Krishna Iyer, J. pithily stated;

"The Supreme Court is more than a Court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws may be electronically detected, we cannot interfere sans manifest injustice or substantial question of public importance".

(emphasis supplied)

[see also V.G. Ramachandran, 'Law of Writs'; Revised by Justice C.K. Thakker & Mrs. M.C. Thakker; Sixth Edn; Vol.2; pp.1440-1528]

Keeping in view totality of facts and attending circumstances including serious allegations of fraud said to have been committed by the land-owners in collusion with officers of the respondent-Port Trust and Government, report submitted by the Central Bureau of Investigation (CBI), prima facie showing commission of fraud and initiation of criminal proceedings, etc. if the High Court was pleased to recall the earlier order by issuing directions to the authorities to pass an appropriate order afresh in accordance with law, it cannot be said that there is miscarriage of justice which calls for interference in exercise of discretionary and equitable jurisdiction of this Court. We, therefore, hold that this is not a fit case which calls for our intervention under Article 136 of the Constitution. We, therefore, decline to do so.

Before parting with the matter, we may state that all the observations made by us hereinabove have been made only for the purpose of deciding the legality and validity of the order passed by the High Court. We may

clarify that we may not be understood to have expressed any opinion on merits of the matter one way or the other. Therefore, as and when the matter will be considered by the authorities in pursuance of the directions of the High Court, it will be decided on its own merits without being inhibited by the observations made by us in this judgment.

For the foregoing reasons, the appeals deserve to be dismissed and are accordingly dismissed with costs.