

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**EASTERN ZONE BENCH, KOLKATA****O.A. NO. 200 OF 2025****In the matter of**

Digambar Bag

... Applicant

Versus

State of Odisha and Ors.

... Respondents

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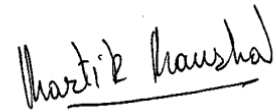
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Date: 11.07.2026

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 200 OF 2025
IN THE MATTER OF:**

DIGAMBAR BAG

...APPLICANT

VERSUS

STATE OF ODISHA & ORS.

...RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 9
(VEDANTA LIMITED) ON THE QUESTION OF MAINTAINABILITY
OF THE ORIGINAL APPLICATION**

[Pursuant to Order dated 12.02.2026 passed by this Hon'ble Tribunal]

*Note**

Page numbers referred to the Written Submission are from (i) OA filed by the Applicant, (ii) Documents filed by R9 on 22.12.2025 and (iii) Judgement Compilation annexed along with the present Written Submissions.

MOST RESPECTFULLY SHOWETH:

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. Respondent No. 9 is a company operating an Aluminium Smelter and Captive Power Plant at Bhurkamunda, District Jharsuguda, Odisha, since the year 2006, providing direct and indirect employment to approximately 6000 persons. The plant operates under Environmental Clearances dated 11.06.2008 and 05.05.2022 granted by the Ministry of

Environment, Forest & Climate Change and other statutory approvals in accordance with the law.

2. The present Original Application, filed on 25.09.2025, alleges encroachment of forest land by Respondent No. 9 in respect of (i) 7.45 acres in Khata No. 55, Banjari Mouza; and (ii) 48.68 acres in Khata No. 108, Plot No. 188, Mouza Bhurkamunda (alleged fly ash dumping); together with a vague, unparticularised allegation of encroachment of the 'Kharakhari Nala'. The prayers seek, inter alia, withdrawal of the Environmental Clearance dated 05.05.2022, eviction and restoration, environmental compensation, and fixing of accountability of public officials.
3. Vide order dated 09.12.2025, this Hon'ble Tribunal noticed the preliminary submissions of Respondent No. 9 on the maintainability of the Original Application in view of parallel and concluded proceedings arising out of the same cause of action, and granted time to place the relevant documents on record. The documents filed by Respondent No. 9 were directed to be placed on record vide order dated 23.12.2025.
4. The preliminary objections were heard in part on 12.02.2026, whereupon this Hon'ble Tribunal was pleased to call for brief written notes of submissions along with copies of the judgments relied upon. The present submissions, confined to the question of maintainability including the entitlement of Respondent No. 9 to be heard prior to admission are filed in compliance therewith.

II. RESPONDENT NO. 9 IS ENTITLED TO BE HEARD AT THE STAGE OF ADMISSION

6. Section 19(1) of the National Green Tribunal Act, 2010 provides that this Hon'ble Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. Audi alteram partem therefore governs every stage of the proceeding, including admission, particularly where the party served is in a position to demonstrate, on admitted documents, that the proceeding is an abuse of process of law.
7. Objections founded on the pendency of parallel proceedings and on statutory bars of limitation are objections going to the *jurisdiction* of the forum. It is settled law that such threshold jurisdictional issues must be decided first in point of time. The Hon'ble Supreme Court in *Sathyanath & Anr. v. Sarojamani*, Civil Appeal No. 3680 of 2022 (**Para 20 at pg 15 of the compilation**), has reiterated that:

“if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.”
8. To the same effect is the judgment of the Hon'ble Supreme Court in *State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.)*, Civil Appeal Nos. 4522–4524 of 2022, which requires that questions of parallel proceedings be addressed by the judicial authority first in point of time. A Tribunal is therefore not merely entitled, but duty-bound, to examine such

objections before admitting an application and to hear the party who has placed the relevant material before it.

9. Statutory Form No. 1 appended to the National Green Tribunal (Practices and Procedure) Rules, 2011 requires every applicant to verify on oath “that the applicant has not suppressed any material fact”. It was accordingly incumbent upon the Applicant to have disclosed all proceedings pertaining to, or even remotely connected with, the prayers made in the present O.A. He has done the opposite. Where a respondent brings such suppression to the notice of the Tribunal, the issue must be addressed at the threshold in order to preserve the purity and integrity of the judicial process. A functional industrial establishment ought not to be subjected to repeated and parallel proceedings arising out of the same cause of action; entertaining such multiplicity would undermine the sanctity and efficiency of the adjudicatory process itself. The instant case is an example wherein the Applicant has not approached to this Hon’ble Tribunal with clean hands and has suppressed material facts by way of non-disclosure of parallel proceedings.

III. THE FACTUAL MATRIX: A HISTORY OF PARALLEL, CONCLUDED AND SUPPRESSED PROCEEDINGS

10. For the convenience of this Hon’ble Tribunal, the relevant events, the majority of which appear from the Applicant’s own annexures and are chronologically tabulated below, followed by land-parcel-wise submissions:

Date	Event	Page No.
11.06.2008	Environmental Clearance granted to Respondent No. 9 for expansion of Aluminium Smelter (2.5 to 16 LTPA) and CPP (675 MW to 1,350 MW) at Bhurkamunda/Brundamal, Jharsuguda; total project land recorded as private land with no forest land involved.	Annexure-1 to O.A.
2011–2012	Qua Khata No. 55: meeting dated 20.05.2011 with the Collector/Tahasildar/DFO; DFO letters dated 26.07.2011 and 20.10.2011 advising vacation; DFO letter No. 1739 dated 17.02.2012 to the Collector regarding non-eviction all recorded in the Applicant's own Annexure-2 (RTI reply dated 27.09.2024).	Annexure-2 to the O.A.
2013–2015	Qua Khata No. 108: Encroachment Case No. 158/2013 and show-cause notice dated 03.09.2013; petition dated 16.08.2013 through Addl. Secretary, F&E Department; DFO letters of 2014; joint verification of 16–18.04.2015 all recorded in the Applicant's own Annexure-2.	Annexure-2 to the O.A.
13.02.2015	W.P.(C) (PIL) No. 2660 of 2015 filed before the Hon'ble Orissa High Court by the present Applicant along with 'Global Human Rights Communications' in respect of the very same land; disposed of on 11.03.2015 with a direction to decide the representation dated 15.09.2014.	Annexures R-8 of documents filed by R-9
2016	O.A. No. 151 of 2016 (Non Violence Again & Anr. v. Vedanta Ltd. & Ors.) filed before this Hon'ble Tribunal in respect of Khata No. 108; dismissed vide order dated 13.11.2016 as barred by limitation. The order records the pending encroachment appeal (para 7) and the	Annexure R-7 of documents filed by R-9

	Applicant's PIL (paras 10 & 21), observing that the contents of the O.A. and the PIL are identical.	
2016–2017	Encroachment Appeal No. 58/2016 (Khata No. 55): third-party intervention allowed by the Sub-Collector; Respondent No. 9 filed W.P.(C) No. 4919 of 2017; the Hon'ble High Court stayed further proceedings vide order dated 27.03.2017 in Misc. Case No. 4301 of 2017. The Writ Petition remains pending.	Annexures R-4 & R-5 of documents filed by R-9
06.09.2017	Encroachment Appeal (Khata No. 108) allowed by the Sub-Collector, setting aside the order in Encroachment Case No. 158/2013 a fact suppressed in the O.A.	Annexure R-6 of documents filed by R-9
23.03.2019	Order No. RDM-LEGAL-CASEEHC-0002-2019/9542/R&M of the Revenue & Disaster Management Department on the representation dated 15.09.2014 (traceable to the Applicant's own PIL), adverse to Respondent No. 9.	Annexure R-10 of documents filed by R9; also recorded in Annexure-2 to the O.A.
18.09.2019	W.P.(C) No. 17332 of 2019 filed by Respondent No. 9 before the Hon'ble Orissa High Court challenging the order dated 23.03.2019; pending adjudication.	Annexure R-11 of documents filed by R-9
05.05.2022	Environmental Clearance for expansion of smelter capacity from 16 to 18 LTPA granted by MoEF&CC; appealable under Section 16 of the NGT Act within 30 days. No appeal was ever filed.	Annexure-1 to the O.A.
17.09.2024 & 27.09.2024	RTI replies of the DFO, Jharsuguda the latter obtained not by the Applicant but by one Sri Satrugan Meher (JBS Office) reciting the 2011–2019 history set out above.	Annexures 2 & 4 to the O.A.

26.03.2025	Representation by 'Jharsuguda Banchao Samiti', of which the Applicant claims to be a member; prima facie signed by the same set of individuals associated with the earlier rounds of litigation.	Annexure-6 to the O.A.
25.09.2025	Present O.A. No. 200 of 2025 filed, computing limitation from the Applicant's own representation, through the same learned counsel who conducted O.A. No. 151 of 2016.	

A. Re: Khata No. 108 (Mouza Bhurkamunda)

11. As regards the alleged encroachment, Respondent No. 9 was served a show-cause notice dated 03.09.2013, culminating in proceedings before the Tahasildar, against which an appeal was preferred. The said appeal was **allowed by the Sub-Collector vide order dated 06.09.2017 (Annexure R-6 of the documents filed by Respondent No. 9)**, setting aside the encroachment proceedings. This fact which demolishes the very foundation of the present O.A. qua Khata No. 108 has been withheld from this Hon'ble Tribunal.
12. **For the very same land, the present Applicant himself filed a Public Interest Litigation** being W.P.(C) No. 2660 of 2015 before the Hon'ble Orissa High Court, describing himself as part of an organisation called “Global Human Rights Communications”. The prayers in the said PIL (**pg. 154 / Annexure R-8 of documents filed by R9**) traverse the identical subject matter. The PIL was disposed of on 11.03.2015 (**Annexure R-9 of documents filed by R9**) with a direction to decide the Applicant's representation dated 15.09.2014.
13. On the said representation, the Revenue & Disaster Management Department, Government of Odisha passed order dated 23.03.2019 (**pg. 158 / Annexure R-10 documents filed by R9**)

adverse to Respondent No. 9, inter alia directing eviction. Against the said order, Respondent No. 9 has filed W.P.(C) No. 17332 of 2019, which is pending before the Hon'ble Orissa High Court. The prayers therein (**pg. 212 / Annexure R-11 of documents filed by R9**), if allowed, would conclusively deal with the very representation of the present Applicant which is now sought to be re-agitated before this Hon'ble Tribunal. Notably, the O.A. itself pleads the order dated 23.03.2019 (in paragraph 7 thereof) as the foundation of the grievance qua Khata No. 108, while suppressing that the said order is sub judice before the Hon'ble High Court. The lis in respect of Khata No. 108 is thus squarely in seisin of the Hon'ble High Court.

14. Parallely, O.A. No. 151 of 2016 was filed before this very Bench by an NGO, 'Non Violence Again', again pertaining to the alleged illegal use of forest land in Khata No. 108. The said O.A. was **dismissed as barred by limitation vide order dated 13.11.2016 (Annexure R-7 of documents filed by R9)**. Paragraph 2 (**pg. 127**) of the said order records that the complaint therein was in respect of this very land; paragraph 7 records the then-pending appeal of Respondent No. 9; and paragraphs 10 and 21 record the PIL filed by the present Applicant, with the express observation that the contents of the O.A. and the PIL were identical. The order dated 13.11.2016, dismissing the OA was never challenged and has attained finality.
15. It is also material that the learned counsel representing the Applicant in the present proceedings is the **same learned counsel who conducted O.A. No. 151 of 2016**. The present O.A. is thus, demonstrably, a fresh attempt after the PIL, the representation route, and O.A. No. 151 of 2016 to rake

up issues which are either pending before another forum or already stand concluded. This is the hallmark of mala fide, surreptitious and vexatious litigation.

B. Re: Khata No. 55 (Banjari Mouza)

16. In respect of this second parcel, Respondent No. 9 was issued a show-cause notice on the ground that certain electricity transmission lines pass over the said land. In Respondent No. 9's Encroachment Appeal No. 58/2016, a third party sought intervention in the professed public interest, which was allowed by the Sub-Collector. Aggrieved thereby, Respondent No. 9 filed W.P.(C) No. 4919 of 2017 (**prayers at pg. 84 / Annexure R-4 of documents filed by R9**) before the Hon'ble Orissa High Court.
17. By order dated 27.03.2017 passed in Misc. Case No. 4301 of 2017 (**pg. 99 / Annexure R-5 of documents filed by R9**), the Hon'ble High Court has **stayed further proceedings in the encroachment case**. The Writ Petition remains pending. The question whether the land in Khata No. 55 stands encroached at all is therefore itself sub judice before the Hon'ble High Court. Any adjudication by this Hon'ble Tribunal on the same question would create the real risk of conflicting findings and would render the pending High Court proceedings otiose. Notably, the Applicant's own Annexure-2 (RTI reply dated 27.09.2024) traces the Khata No. 55 grievance to DFO communications of 2011 and the Collector's letter of 17.02.2012 placing the origin of this dispute more than thirteen years before the filing of the O.A.

IV. THE O.A. IS SELF-DEFEATING ON ITS OWN PLEADINGS AND ANNEXURES

18. Even without reference to the record produced by Respondent No. 9, the O.A. fails on its own documents:
 - (a) The Applicant's own Annexure-2 the RTI reply dated 27.09.2024 narrates, in terms, the entire administrative history: the meeting of 20.05.2011, the DFO letters of 26.07.2011 and 20.10.2011, the Collector letter No. 1739 dated 17.02.2012 (qua Khata No. 55); and the petition of 16.08.2013, the letters of 2014, the joint verification of April 2015 and the order dated 23.03.2019 (qua Khata No. 108). On the face of the O.A., therefore, the cause of action *first arose* in 2011–2013, and everything the Applicant now alleges has been squarely within the public and administrative record and within the knowledge of his own circle of associates for over a decade.
 - (b) The RTI reply dated 27.09.2024 (Annexure-2) was not even obtained by the Applicant: it is addressed to one Sri Satrugan Meher of the 'JBS Office'. The plea of freshly acquired personal knowledge is thus a connivance built upon a third party's RTI application.
 - (c) The O.A.'s own limitation paragraph computes the six-month period not from any RTI reply but from the Applicant's own representation dated 26.03.2025 evidently because six months from the RTI replies of 17.09.2024 and 27.09.2024 expired in March 2025, well before the O.A. was filed on 25.09.2025. A litigant cannot generate his own cause of action by addressing a representation and then suing 'within

six months of the letter'; otherwise the statutory limitation under Section 14(3) would be perpetually within the applicant's own control and rendered wholly nugatory.

- (d) Paragraph 9 of the O.A. discloses that the Applicant is a member of yet another organisation 'Jharsuguda Banchao Samiti' the third front associated with this litigation after 'Global Human Rights Communications' (the PIL) and 'Non-Violence Again' (O.A. No. 151/2016). The representation dated 26.03.2025 (Annexure-6) prima facie bears the signatures of the same set of individuals associated with the earlier rounds, including Sri Jagannath Bhoi (Applicant No. 2 in O.A. No. 151 of 2016) and Sri Hemraj Sandha (the RTI applicant of 2013 whose reply was Annexure-3 to O.A. No. 151 of 2016). The present O.A. is thus the same litigation, by the same collective, wearing its fourth mask.

V. SUPPRESSION OF MATERIAL FACTS IS, BY ITSELF, FATAL TO THE O.A.

19. None of the aforesaid proceedings the Sub-Collector's order dated 06.09.2017, the Applicant's own PIL, the pendency of W.P.(C) No. 4919 of 2017 and W.P.(C) No. 17332 of 2019, or even the dismissal of O.A. No. 151 of 2016 is disclosed in the Original Application. The Applicant, who moves this Hon'ble Tribunal claiming to espouse the public interest, has approached the Tribunal with unclean hands. Notably, suppression by successive front organisations was a circumstance which weighed with this Hon'ble Tribunal in O.A. No. 151 of 2016 itself.

20. Recently, the Hon'ble Supreme Court in *Vishnu Vardhan @ Vishnu Pradhan v. State of Uttar Pradesh*, Civil Appeal No. 7777 of 2023 (**para 50 at pg 63 of compilation**), while dealing with suppression of an earlier series of litigation, held:

“50. Moving ahead, it is equally well settled that suppression of even a single material fact can be fatal before writ courts. In this context, one may usefully refer to the decision of this Court in S.J.S. Business Enterprises (P) Ltd. v. State of Bihar where the law has succinctly been stated as follows:

13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken... (emphasis ours)

51. In the present case, Reddy's failure before the High Court to disclose the earlier series of litigation - where he consistently asserted joint ownership with Vishnu and Sudhakar - being a fact having a bearing on the merits of the case, is alone sufficient to vitiate the impugned order.”

21. Reliance is also placed on *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1 (**para 6 at pg 115 of compilation**), *K.D. Sharma v. Steel Authority of India Ltd.*, (2008) 12 SCC 481, and *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114, wherein the Hon'ble Supreme Court has consistently held that a litigant who suppresses material facts or approaches the court with unclean hands is not entitled to be heard on the merits at all,

and that such litigation must be thrown out at the threshold. The suppression in the present case is deliberate, material, and pollutes the very process of this Hon'ble Tribunal.

VI. THE BAR OF PARALLEL PROCEEDINGS AND JUDICIAL PROPRIETY

22. The Hon'ble Supreme Court in *State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.)*, Civil Appeal Nos. 4522–4524 of 2022 (**relevant paras 8–14; at pg 158 to 162 of the compilation**), has categorically held that the NGT should refrain from taking cognizance of a matter when the same subject matter is pending before the jurisdictional High Court.
23. Following the aforesaid judgment, this Hon'ble Tribunal has, on at least three occasions, declined to entertain applications where the same subject matter was in seisin of the High Court: (i) *Nishanth Gopal v. Union of India*, O.A. No. 102 of 2020 (**para 8, 11 and 14, at pg. 187 to 188 of the compilation**); (ii) *Narayan Das Tulsani v. State of Rajasthan*, O.A. No. 407 of 2022 (**paras 7 and 8 at pg 192-193 of compilation**) ; and (iii) *Jitendra Kumar Singh v. State of Odisha*, O.A. No. 10 of 2025 (**paras 8 and 12 at pg 201 of compilation**).
24. Most recently, the Hon'ble Supreme Court in *State of Himachal Pradesh v. Yogendra Mohan Sengupta*, Civil Appeal Nos. 5348–5349 of 2019 (**Para 109 to 112 at pg 285 to 287 of compilation**), took strong exception to the NGT continuing with a matter which was sub judice before the High Court, and reprimanded the Tribunal for departing from judicial discipline, observing:

“109. In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.

112. In any case, the second order of NGT is passed basically on the basis of the first order of NGT. Since we have held the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside, on the short ground. This, apart from the fact that as discussed hereinabove, on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter and specifically when it was informed about the same.”

25. In the present case, the encroachment proceedings qua Khata No. 55 stand stayed by the Hon'ble High Court in W.P.(C) No. 4919 of 2017, and the eviction direction dated 23.03.2019 qua Khata No. 108 expressly pleaded in paragraph 7 of the O.A. as the foundation of the grievance is directly under challenge in W.P.(C) No. 17332 of 2019. Both parcels are therefore in seisin of the Hon'ble Orissa High Court, which exercises supervisory jurisdiction over this Hon'ble Tribunal. This Hon'ble Tribunal, having been informed of the same, ought not, in judicial propriety, to proceed further with the present O.A.

VII. THE O.A. IS, IN ANY EVENT, HOPELESSLY BARRED BY LIMITATION

26. Without prejudice to the above, the O.A. is barred by the mandatory periods of limitation prescribed under the NGT Act, 2010:

- (a) Section 14(3) mandates that an application shall not be entertained unless made within six months *from the date on which the cause of action for such dispute first arose*, extendable by a maximum of sixty days upon sufficient cause. Section 15(3) similarly prescribes five years from the date on which the cause for compensation or restitution *first arose*, extendable by sixty days. The statutory trigger is the date on which the cause of action **first arose**, not the date of the applicant's professed 'knowledge', and certainly not the date of a representation authored by the applicant himself.
- (b) On the O.A.'s own showing: qua Khata No. 55, the DFO's communications of 2011 and the Collector letter dated 17.02.2012 (pleaded in paragraph 3 and evidenced by Annexure-2); and qua Khata No. 108, the encroachment proceedings of 2013 and the order dated 23.03.2019 (pleaded in paragraph 7). The cause of action thus first arose, at the very latest, on 23.03.2019 more than six years before the O.A. was filed on 25.09.2025. Even the outermost five-year period under Section 15(3), computed from 23.03.2019, expired on 23.03.2024.
- (c) Even on the Applicant's untenable 'knowledge' theory, the RTI replies relied upon are dated 17.09.2024 and 27.09.2024; six months therefrom expired on 17.03.2025 and 27.03.2025 respectively. The O.A. filed on 25.09.2025 is beyond even that indulgent computation which is precisely why the O.A. instead pleads limitation from the representation dated 26.03.2025. A representation cannot create, revive, or extend a cause of action; it is settled law that the making

of repeated representations does not enlarge limitation, else the statutory period would be reduced to a dead letter.

- (d) This very question already stands concluded. O.A. No. 151 of 2016, in respect of the same land in Khata No. 108 and on the same allegations, was dismissed by this Hon'ble Tribunal on 13.11.2016 as barred by limitation. The plea of 'continuing wrong' was equally available then; it did not save that application. The unchallenged dismissal has attained finality, and the same cause cannot be resurrected nine years later through a fresh face.
- (e) The theory of 'continuing cause of action' cannot be permitted to render the statutory limitation under Sections 14(3) and 15(3) otiose. If mere continuance of an alleged state of affairs or the ritual of a fresh RTI or representation could perpetually refresh limitation, no application before this Hon'ble Tribunal could ever be time-barred: a construction destructive of the statute.

VIII. THE CHALLENGE TO THE ENVIRONMENTAL CLEARANCE DATED 05.05.2022 IS BARRED AND MISCONCEIVED; THE 'KHARAKHARI NALA' PLEA IS A ROVING INQUIRY

- 27. Prayer I of the O.A. seeks withdrawal of the Environmental Clearance dated 05.05.2022. The statutory remedy against the grant of an EC is an **appeal under Section 16(h) of the NGT Act, 2010, within thirty days** of communication (condonable by a further period not exceeding sixty days). The EC was granted on 05.05.2022 and, as per its own General Condition X(i), was required to be and was publicised in newspapers and displayed permanently on the proponent's website. No appeal was ever preferred. The

present O.A., filed on 25.09.2025 nearly three and a half years later is a disguised, hopelessly time-barred appeal. An application under Section 14 cannot be employed to circumvent the appellate remedy and limitation prescribed under Section 16.

28. The allegation of 'suppression' in the EC that the involvement of forest land was answered as 'No' is equally misconceived. The EC pertains to the expansion within the existing project area of 834.236 ha recorded as private land in the possession of Respondent No. 9, consistent with the position in the EC dated 11.06.2008. Whether the disputed parcels are allegedly encroached forest land is the very question pending before the revenue authorities and the Hon'ble High Court; the Applicant cannot assume the answer and then charge the proponent with 'concealment'. In any event, action for alleged incorrect disclosure under General Condition X(x) lies within the domain of the MoEF&CC, and any grievance against the EC lay in appeal under Section 16.
29. The allegation regarding the 'Kharakhari Nala' (paragraph 8 of the O.A.) is stated in a single sentence, without particulars of location, extent, date, or supporting document, and the corresponding prayer is that an 'appropriate inquiry be made to ascertain the fact'. This is, in terms, a prayer for a roving and fishing inquiry impermissible in law. Moreover, Specific Condition (iii) of the EC dated 05.05.2022 itself deals with the nallah passing through the project site, mandating that it be maintained in its natural form with a 10 m green buffer on both sides; compliance thereof is monitored by the Regional Office of the MoEF&CC and the SPCB under the terms of the EC. No cause of action, much less a substantial question relating to the environment, is disclosed.

IX. SPECIFIC REPLY TO THE WRITTEN NOTE FILED ON BEHALF OF THE APPLICANT

30. Without prejudice to the foregoing, the contentions in the Applicant's Written Note are replied to seriatim as under:

- (i) **Re: 'the subject matter before the High Court is entirely different' (paras 3(a)–(d))** The contention is misconceived. W.P.(C) No. 4919 of 2017 arises out of, and has stayed, the very encroachment proceedings in which the foundational question whether the land in Khata No. 55 is encroached forest land at all falls for determination. The Applicant cannot invite this Hon'ble Tribunal to assume the very fact (alleged encroachment) which is sub judice and then characterise the pending proceeding as 'procedural'. Equally, the jurisdiction of this Hon'ble Tribunal under Section 14 is not 'exclusive' in the sense canvassed; it does not oust, and is subject to the supervisory jurisdiction of, the Hon'ble High Court under Articles 226/227, as held in *Yogendra Mohan Sengupta* (supra).
- (ii) **Re: the deposit of Rs. 53,927/- as 'deemed admission' (para 4)** A deposit made in revenue proceedings pursuant to a demand, and under the compulsion of statutory process, is no admission of encroachment, much less of any violation of the Forest (Conservation) Act, 1980. The proceedings in which the said deposit was made form part of the very lis pending before the revenue authorities/High Court, and cannot be selectively relied upon while

suppressing the Sub-Collector's order dated 06.09.2017 in favour of Respondent No. 9.

- (iii) **Re: limitation and the proviso to Section 14(3) (para 5)** As demonstrated in Part VII above, the statute runs from the date the cause of action first arose, and the proviso permits an extension of sixty days only. The Applicant's plea of a six-month window 'from knowledge' has no statutory foundation; and, in any event, even that theory fails on the record, since the RTI replies now disclosed are of 17.09.2024 and 27.09.2024, more than a year before filing. The O.A.'s actual computation from the Applicant's own representation of 26.03.2025 is legally untenable, and his asserted recent knowledge is falsified by his own PIL of 2015, the representation of 2014, and the 2011–2019 history recited in his own Annexure-2.
- (iv) **Re: res judicata and O.A. No. 151 of 2016 (paras 5(c), 5(d), 6 and 7)** The objection of Respondent No. 9 is not confined to res judicata stricto sensu; it is one of abuse of process through successive proceedings by the same set of interests operating through different fronts 'Non Violence Again' in O.A. No. 151 of 2016, 'Global Human Rights Communications' in the PIL, and now 'Jharsuguda Banchao Samiti' through the Applicant conducted by the same learned counsel, and prima facie supported by the same signatories. In public interest proceedings, the principles underlying Explanation VI to Section 11 CPC apply (*Forward Construction Co. v. Prabhat Mandal (Regd.)*, (1986) 1 SCC 100), and a person litigating bona fide in respect of a public right represents all persons interested in

that right. The finality of the order dated 13.11.2016 cannot be circumvented by simply changing the name on the cause title.

- (v) **Re: the order dated 23.03.2019 (paras 8 and 9)** The Applicant's reliance on the said order is self-defeating. He himself admits that the order is under challenge in W.P.(C) No. 17332 of 2019, which is pending. The 'acknowledgment of illegal occupation' he propounds is thus the very issue in seisin of the Hon'ble High Court. The Applicant cannot simultaneously (a) rely on an order which is sub judice, and (b) invite this Hon'ble Tribunal to pre-empt the High Court's adjudication upon it. His admission that the matter 'remains live and unresolved' before the High Court is a complete answer to the maintainability of the present O.A.
- (vi) **Re: the alleged inapplicability of Raghu Ramakrishna Raju (para 12)** The distinction sought to be drawn on the basis of the 'relief sought' is untenable. The test is identity of subject matter, not identity of the prayer clause; else every parallel proceeding could be sustained by cosmetically re-drafting the prayers. The subject matter here the character of the land and the alleged encroachment thereon in Khata Nos. 55 and 108 is identical to that pending before the Hon'ble High Court, and the ratio of *Raghu Ramakrishna Raju* and *Yogendra Mohan Sengupta* applies with full force.
- (vii) **Re: the plea that the O.A. cannot be dismissed in limine (para 13)** To the contrary, where an application is shown to be barred by limitation, hit by parallel proceedings, and vitiated by suppression, the Tribunal is duty-bound to decide these threshold issues first (*Sathyanath v. Sarojamani*, supra) and to decline admission.

Environmental jurisdiction, however salutary, is not a licence for forum-shopping or for the endless recycling of stale and concluded grievances.

X. CONCLUSION

31. In the premises aforesaid, it is most respectfully submitted that the present Original Application (i) is an abuse of the process of this Hon'ble Tribunal, being the latest in a series of proceedings by the same interests, through successive fronts, in respect of the same lands; (ii) trenches upon matters in seisin of the Hon'ble Orissa High Court in W.P.(C) No. 4919 of 2017 and W.P.(C) No. 17332 of 2019; (iii) is hopelessly barred by limitation under Sections 14(3) and 15(3) of the NGT Act, 2010, on the Applicant's own pleadings and annexures; (iv) insofar as it challenges the Environmental Clearance dated 05.05.2022, is a disguised appeal barred under Section 16; and (v) stands vitiated by deliberate suppression of material facts. The O.A. is accordingly liable to be dismissed at the threshold as not maintainable, with exemplary costs.
32. It is further submitted that other issues including those pertaining to limitation on merits and the applicability/jurisdiction of the special enactment being the Odisha Prevention of Land Encroachment Act, 1972 are expressly reserved, to be urged before the Hon'ble High Court in the pending proceedings, or before this Hon'ble Tribunal in the event the application is found worthy of admission. In such event, the Respondent reserves the right to file appropriate detailed reply or makes submissions to the OA filed by the Applicant.

FILED BY:

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Date: 11.07.2026

Counsel for Respondent No. 9

Settled by:

NIKHIL GOEL, SENIOR ADVOCATE

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.3680 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 20375 OF 2021)**

SATHYANATH & ANR.

.....APPELLANT (S)

SAROJAMANI

.....RESPONDENT(S)

J U D G M E N T**HEMANT GUPTA, J.**

1. The challenge in the present appeal is to an order dated 3.9.2021 whereby in the revision petition filed by the defendant under Article 227 of the Constitution of India, the trial court was directed to frame preliminary issue as to whether the suit is barred by res judicata.
2. The plaintiffs-appellants filed O.S. No. 95 of 2016 against the respondent, their paternal aunt. The appellants claimed a declaration for declaring the appellants as absolute owners of the suit property, judgment and decree in O.S. No. 65 of 2003 as null and void, and, for permanent injunction restraining the defendant and their agents in disturbing the peaceful possession and enjoyment of the suit property

by the appellants in any manner. Initially, the defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908¹ for rejection of the plaint but the same was dismissed by the trial court on 20.6.2017. It is thereafter, the defendant filed an application to frame issues under Order XIV Rule 2(2) of the Code to treat the following as the preliminary issues:

- “1. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para- 10 & 11.
2. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para-12.
3. Whether the suit is not barred by limitation as contented by the defendant in the written statement in Para-13.
4. Whether the Plaintiffs have deliberately and wantonly abused the process of the court, as contented by the defendant in the written statement in Para-15 and 16.
5. Whether the suit is not valued properly and court fee paid is deficient as claimed by the defendant in Para 18 of the Written statement.”

3. The learned trial court dismissed the application of the defendant on 3.10.2019. Such order of the learned trial court was challenged in revision petition under Article 227 of the Constitution of India wherein the High Court ordered the framing of issue of res judicata as preliminary issue.
4. Learned counsel for the appellants relied upon provisions of Order XIV Rule 2 of the Code to contend such Order XIV Rule 2 has been

1 For short, the 'Code'

substituted by Central Act No. 104 of 1976, whereby the Court is mandated to pronounce judgment on all issues, even though the suit can be disposed of on a preliminary issue. It was argued that such amendment was necessitated to avoid delay in the disposal of the proceedings inasmuch as if only a preliminary issue is decided, the further appeal and revision would be preferred only against the preliminary issue and after the preliminary issue is decided in favour of the plaintiffs, the evidence has to be led on the remaining issues. Therefore, to ensure expeditious disposal of the proceedings and to avoid possibility of remand by the appellate or revisional jurisdiction, it was made mandatory for the Court to record reasons on all the issues. Such finding would obliterate the possibility of remand at appellate or revisional stage, even if the finding on preliminary or other issues are to be reversed.

5. Order XIV Rule 2 before amendment by the Act No. 104 of 1976 reads thus:

“R. 2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.”

6. The said provision came up for consideration before this Court in a judgment reported as **Major S. S. Khanna v. Brig. F. J. Dillon**². It was held that under Order XIV Rule 2 of the Code where issues both of

2 AIR 1964 SC 497

law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and postpone the settlement of the issues of fact until other issues of law have been determined. It was held as under:

“18. Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

7. The Order XIV Rule 2 after the substitution of Rule 2 by the Act No. 104 of 1976, effective from 1.4.1977, reads thus:

“2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in

force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

8. Some other provisions of the Code, which are relevant to decide the issues raised in the preset appeal are as follows:

“ORDER XX
JUDGMENT AND DECREE

“5. Court to state its decision on each issue. – In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

24. Where evidence on record sufficient, Appellate Court may determine case finally. - Where the evidence, upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from. - Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return

the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time.”

9. The amended provision of Order XIV came up for consideration before the Full Bench of Allahabad High Court in a judgment reported as ***Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and Ors.***³ It was held that material changes had been brought about by substituting Order XIV Rule 2 of the Code. The word ‘shall’ in the unamended provision has been replaced by the word ‘may’ in the substituted provision, therefore, it is now discretionary for the Court to decide the issue of law as a preliminary issue, or to decide it along with the other issues. It was further held that even all issues of law cannot be decided as preliminary issues and only those issues of law falling within the ambit of clause (a) and (b) of sub-rule (2) of Rule 2 could be decided. The High Court held as under:

“22. Under the above provision once the court came to the conclusion that the case or any part thereof could be disposed of on the issues of law only it was obliged to try those issues first and the other issues could be taken up only thereafter, if necessity survived. The court had no discretion in the matter. This flows from the use of the word “it shall try those issues first”. Material change has been brought about in legal position by amended O. 14, R. 2 which reads as follows:—

xxx

xxx

xxx

24. The word “shall” used in old O. 14, R. 2 has been replaced in the present Rule by the word “may”. Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory

3 AIR 1991 ALL 89

for the Court to decide an issue of law as a preliminary issue.

25. Another Change brought about by the amended provision is that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of cls. (a) and (b) of sub-r. (2) of R. 2 of O. 14. Cl. (a) mentions “jurisdiction of the Court” and clause (b) deals with “bar to the suit created by any law for the time being in force.” In the present case cl. (a) is not attracted. The case is sought to be brought within the ambit of cl. (b). For bringing it under cl. (b) Limitation Act and the Muslim Waqf Act have been invoked.”

10. A Full Bench of Himachal Pradesh High Court in a judgment reported as

Prithvi Raj Jhingta & Anr. v. Gopal Singh & Anr.⁴, held as under:

“8. The legislative mandate is very clear and unambiguous. In the light of the past experience that the old Rule 2 whereby, in the fact-situation of the trial Court deciding only preliminary issues and neither trying nor deciding other issues, whenever an appeal against the judgment was filed before the Appeal Court and the Appeal Court on finding that the decision of the trial Court on preliminary issues deserved to be reversed, the case per force had to be remanded to the trial Court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial Court on all the issues, both of law and fact.

9. Based upon the aforesaid reasons therefor, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones

4 AIR 2007 HP 11

settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because sub-rule (1) does not permit the Court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit.”

11. A Single Bench of Punjab and Haryana High Court in a judgment reported as ***Hardwari Lal v. Pohkar Mal and Ors.***⁵ compared the provision of Order XIV Rule 2 prior to and after the amendment and held as under:

“5. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the unamended Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion upon the Court that if it is of opinion that the case or any part thereof may be disposed of “on an issue of law only,” it may try that issue first. The exercise of this discretion is further

5 AIR 1978 P&H 230

limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.”

12. A Single Bench of Patna High Court in a judgment reported as ***Dhirendranath Chandra v. Apurba Krishna Chandra and Ors.***⁶ held that even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgment on all the issues, subject to the provision in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue relates to jurisdiction of the Court or a bar to the suit created by law for the time being in force, the Court may try such issue first. The High Court held as under:

“6. A plain reading of R. 2 will show that ordinarily even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgement on all issues. This ordinary rule is subject to only one exception which has been provided in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue of law relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force the court may try such issue first. It is, therefore, clear that a departure from the ordinary rule provided in sub-rule (1) of R. 2 can be made by the Court only in the circumstances mentioned in sub-rule (2) and even in these circumstances the Court has only a discretion that it may try an issue of law relating to the points mentioned in clauses (a) and (b) of sub-rule (2) as a preliminary issue before framing other issues. There is, however, nothing in sub-rule (2) which in my opinion makes it obligatory for the Court to try such an issue first in all cases. If, therefore, the Court is of opinion that in any particular case it will be more expedient to try all the issues together and therefore, if it refuses to try and decide any issue of law even on the points referred to in cls. (a) and (b) of sub-rule (2) as a preliminary issue before taking up other issues.

6 AIR 1979 Pat 34

xxxx "

13. A Single Bench of Bombay High Court in a judgment reported as ***Usha Sales Ltd. v. Malcolm Gomes and Ors.***⁷ held that after the amendment, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce the judgment on the same, except that the Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue. It was held to be more in the nature of discretion rather than a duty. It was held as under:

"11. From the above it is easily seen that there is an obligation cast upon the Court that even though a case may be disposed of on a preliminary issue the Courts shall subject to the provision of sub-rule (2) pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer, there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.

12. There is, however, a small exception carved out to the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in sub-r. (2) of R. 2 of O. 14 of the Code. The words "it may try" are clearly indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue."

14. A Single Bench of Jammu and Kashmir High Court in a judgment reported as ***Smt. Aruna Kumari v. Ajay Kumar***⁸ held as under:

"4. Admittedly both the parties have to lead evidence

⁷ AIR 1984 Bom 60

⁸ AIR 1991 J&K 1

regarding both the issues. In case issue No. 2 is allowed to be treated as preliminary the parties will certainly lead evidence in the case and instead of disposing of the case expeditiously it will prolong the matter and frustrate the very basis of law contained in Order XIV, Rule 2, Civil Procedure Code. The evidence to be led by both the parties will almost cover both the issues and it cannot, therefore, be said that by allowing issue No. 2 to be treated as preliminary the trial of the case would be expedited. When we review the whole law on the point it becomes clear that where issue of jurisdiction is a mixed question of law and fact requiring evidence to be recorded by both the sides same cannot be treated as a preliminary issue."

15. The matter has also been examined by this Court in a judgment reported as ***Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.***⁹ wherein it was held as under:

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

"xxx

xxx"

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."

16. This Court in ***Ramesh B. Desai*** held that the principles enunciated in ***Major S. S. Khanna*** still hold good and the Code confers no

9 (2006) 5 SCC 638

jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of Order XIV Rule 2 clause (a) and (b). After the amendment, discretion has been given to the Court by the expression 'may' used in sub-rule (2) to try the issue relating to the jurisdiction of the Court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e., the bar to file a suit before the Civil Court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order XIV Rule 2 is read along with Order XII Rule 5, the Court is expected to decide all the issues together unless the bar of jurisdiction of the Court or bar to the suit in terms of sub-rule (2) clause (a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the */is* on a question which oust either the jurisdiction of the Court or bars the plaintiff to sue before the Civil Court.

17. We may state that the First Schedule appended to the Code contains the procedure to be applied in respect of the matters coming for adjudication before the Civil Court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as ***Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr.***¹⁰ wherein it was observed as

10 (2003) 3 SCC 272

under:

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.....”

18. A three Judge Bench in a subsequent judgment reported as ***Kailash v. Nanhku & Ors.***¹¹ held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance the cause of justice. The Court held as under:

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to

11 (2005) 4 SCC 480

act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

29. In *State of Punjab v. Shamlal Murari* [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

In *Ghanshyam Dass v. Dominion of India* [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

19. This Court in ***Sugandhi v. P. Rajkumar***¹² held that if the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was held as under:

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey

12 (2020) 10 SCC 706

towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the *lis* and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.
21. In fact, in a judgment reported as ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors.***¹³, this Court held as under:

"39. Our courts are usually short of time because of huge

¹³ (2012) 6 SCC 430

pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.”

22. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in **Ramesh B. Desai** that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of the Court” and (b) which deal with the “bar to the suit created by any law for the time being in force.” The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.
23. On the other hand, learned counsel for the respondent relies upon the judgments of this Court reported as **Abdul Rahman v. Prasony Bai & Anr.**¹⁴, **Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors.**¹⁵ and **Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs. & Ors.**¹⁶ to contend that on a question of res judicata, the preliminary issue needs to be framed.

14 (2003) 1 SCC 488

15 (2021) 9 SCC 99

16 2021 SCC OnLine SC 792

24. In ***Abdul Rahman***, this Court was examining a suit filed by the appellant in the year 1999 to declare that the defendant is not the daughter of Mangal Singh and that the appellant is in adverse possession even during the life time of Mangal Singh. An additional issue was framed regarding the jurisdiction of the civil suit to try the said suit. The High Court in proceedings passed an order on 29.11.2001 dismissing the suit on the preliminary issue whether the dispute to the present civil suit has already been decided and adjudicated by the Court and is barred by the principles of res judicata. An intra court appeal was filed which was dismissed on 4.12.2001 and thereafter, the matter travelled to this Court. In these circumstances, this Court held as under:

“21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.”

25. A perusal of the above judgment of this Court shows that it was an admitted fact that issue of res judicata and of constructive res judicata can be adjudicated as preliminary issue. Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea

of res judicata can be decided as a preliminary issue.

26. In ***Srihari Hanumandas Totala***, the property was mortgaged in favour of Karnataka State Finance Corporation¹⁷. The Corporation auctioned the property as the loan was not repaid. The legal heirs of the borrower filed a suit in OS No. 138 of 2008 challenging the sale deed dated 8.8.2006 executed by the Corporation and partition of the suit property. A separate OS No. 103 of 2007 was filed by the purchaser from the Corporation. Such suit of the purchaser was decreed on 26.2.2009. The decree in the said suit was affirmed by the High Court on 11.8.2007. The purchaser from the Corporation filed an application under Order VII Rule 11 for rejection of the plaint of OS No. 138 of 2008. Such application was dismissed by the learned trial court. The order was affirmed in revision by the High Court holding that the ground of res judicata could not be decided merely by looking averments in the plaint. It is the said order which became subject matter of challenge before this Court. This Court found that the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit and such a plea would be beyond the scope of Order VII Rule 11. However, in the operative paragraph, it was observed that the trial court shall consider whether a preliminary issue should be framed under Order XIV, and if so, to decide it within a period of three months of raising the preliminary issue. The operative part of the order reads thus:

¹⁷ For short, the 'Corporation'

“28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.”

27. This Court was thus examining the scope of Order VII Rule 11 of the Code, whereas such is not the issue in the present appeal. In fact, the defendant has filed an application for framing of preliminary issues. The direction of the High Court is on such application. Therefore, such application needs to be considered in the light of the provisions of Order XIV Rule 2 of the Code.
28. In ***Jamia Masjid***, the judgment and decree in a second appeal holding that the suit is barred by the principle of res judicata was the subject matter of challenge before this Court. The learned trial court decided Issue Nos. 5 and 6 related to res judicata and limitation as preliminary issue. It was held that suit was not barred by limitation but barred by res judicata. In appeal, such finding was affirmed. However, in second appeal, the matter was remanded to the trial court for disposal of the suit in accordance with law holding that the suit is not barred by res

judicata. In appeal against such judgment and decree, appeal was remanded to the High Court. The High Court after remand held that the judgment in a representative suit under Section 92 of the Code binds the parties to the suit and would thus operate as *res judicata*.

29. In appeal before this Court, it was considered whether *res judicata* raises a mixed question of law and facts. The Court held as under:

“26. The court while undertaking an analysis of the applicability of the plea of *res judicata* determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of *res judicata* would be inapplicable. We are unable to accept the submission of the appellants that *res judicata* can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of *res judicata* turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

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62. In view of the discussion above, we summarise our findings below:

(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of *res judicata* if there arises a new fact which has to be proved. However, the plea of *res judicata* may in an appropriate case be determined as

a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it;"

30. A perusal of the said judgment would show that only issue Nos. 5 and 6 were decided relating to res judicata and limitation as preliminary issues by judgment dated 3.2.2006. This Court set aside the finding on the preliminary issue by judgment dated 23.9.2021 i.e., almost more than 15 years later when the matter was remanded back to the trial court. The absence of the decision on all issues have necessitated the matter to be remanded back, defeating the object of expeditious disposal of *lis* between the parties. The conclusion in Para 62(i) is that the plea of res judicata in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact. Such finding is what this Court held in ***Ramesh B. Desai***.
31. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the *lis* between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created

by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

32. The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate Court can call upon the parties to lead evidence on such additional issues, either before the Appellate Court or before the Trial Court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the *lis* between the parties.
33. Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues.
34. Therefore, the order of the High Court remanding the matter to the learned trial court to frame preliminary issues runs counter to the

mandate of Order XIV Rule 2 of the Code and thus, not sustainable in law. The learned trial court shall record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue.

35. Consequently, the appeal is allowed. The order passed by the High Court is hereby set aside.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
MAY 06, 2022.**



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7777/2023

VISHNU VARDHAN @ VISHNU PRADHAN

... APPELLANT

VS.

THE STATE OF UTTAR PRADESH & ORS.

... RESPONDENT(S)

With

W.P. (C) No. 673/2023

VISHNU VARDHAN @ VISHNU PRADHAN

... PETITIONER

VS.

THE STATE OF UTTAR PRADESH & ORS.

... RESPONDENT(S)

With

MA No. 1737/2023 in MA 255/2023 in C.A. No. 3636/2022

With

CONMT. PET. (C) No. 23-24/2024 in W.P. (C) No. 673/2023

With

Diary No(s). 6013/2024

With

SMC (C) No. 3/2024

J U D G M E N T**DIPANKAR DATTA, J.****INDEX**

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INTRODUCTION

1. In ***Nidhi Kaim v. State of Madhya Pradesh***¹, a three-Judge Bench of this Court emphatically asserted "... stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything."
2. At the end of the last century, this Court in ***S.P. Chengalvaraya Naidu v. Jagannath***² noticed the growing trend of abuse of the process of law by dishonest litigants playing fraud on courts. Fraud was held to be an act of deliberate deception with the design of securing something by taking unfair advantage of another: a deception in order to gain by another's loss. The opening paragraph of such decision reads as follows:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

This Court then warned that:

5. 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. 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.

3. "Fraud unravels everything" was famously said by Lord Denning in ***Lazarus Estates Ltd. v. Beasley***³, emphasising that fraud can invalidate judgments,

¹ (2017) 4 SCC 1

² (1994) 1 SCC 1

³ (1956) 1 Q.B. 702

contracts and all transactions. The principle highlights the importance of honesty and transparency in legal proceedings and transactions. However, it is a cardinal principle of law that fraud has to be pleaded and proved. Order VI Rule 4, of the Code of Civil Procedure, 1908⁴ may be referred to ordaining that particulars, *inter alia*, of fraud have to be stated in the pleadings.

4. From the multiple decisions of this Court on 'fraud', what follows is that fraud and justice cannot dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and even finality of litigation cannot be pressed into service to absurd limits when a fraud is unravelled.
5. The issue of fraud unravelling everything is pertinent here due to the nature of dispute we are tasked to adjudicate; hence, its reference at the beginning of our judgment.
6. The primary parties involved in these proceedings are the appellant-writ petitioner-applicant, Vishnu Vardhan⁵, and the respondent no.7, Reddy Veeranna⁶. Vishnu has alleged that fraud has been played by Reddy on courts to reap benefits behind Vishnu's back. The tangled facts involved in these proceedings, the complex web of activities of the primary parties and their associates and the relief claimed in the civil appeal as well as the writ petition by Vishnu would have to be examined in great depth to ascertain whether fraud, as alleged by him, is established; and, if so, how it has affected the flow of judicial proceedings and the manner in which the same has to be dealt with.

⁴ CPC

⁵ Vishnu

⁶ Reddy

In the process, other petitions/applications that are on record would also require due consideration.

7. In the civil appeal, by special leave, Vishnu has assailed the judgment and order⁷ of the High Court of Judicature at Allahabad⁸ dated 28th October, 2021, whereby the High Court allowed a writ petition⁹ filed by Reddy.
8. Concurrently with the civil appeal, Vishnu has presented a writ petition under Article 32 of the Constitution. He has prayed for diverse relief therein, which we propose to notice a little later.
9. The present *lis* concerns rival claims in respect of ownership of a land¹⁰ situated in Gautam Budh Nagar, Uttar Pradesh, which was acquired by the New Okhla Industrial Development Authority¹¹ in 2005 and now forms a part of Sector 18, NOIDA. The land was jointly purchased in 1997 by Reddy, one T. Sudhakar¹² and Vishnu¹³. Relying on their joint ownership, the trio initiated various legal proceedings seeking multiple relief from time to time, before and after the acquisition of the land by NOIDA. Vishnu alleges that Reddy made several attempts to assert his exclusive ownership in proceedings where Vishnu and Sudhakar were not joined as parties. He further alleges that in one such proceeding, Reddy succeeded and the High Court, by the impugned order, declared him the sole owner. Aggrieved by the conduct of Reddy (which,

⁷ impugned order

⁸ High Court

⁹ Civil Misc. Writ Petition No. 2272/2019

¹⁰ referred to as land, subject land or property, interchangeably, hereafter

¹¹ NOIDA

¹² Sudhakar

¹³ the trio, wherever referred to collectively

according to Vishnu, is fraudulent) and the impugned order, Vishnu has sought relief from this Court by presenting the civil appeal.

- 10.** While the relief claimed in the civil appeal is for setting aside of the impugned order, what is prayed in the writ petition is (i) a declaration that Reddy is not the sole owner of the subject land, (ii) an order setting aside NOIDA's decision (reflected in its letter dated 17th January, 2023) to sanction full compensation for acquisition of the land to Reddy, (iii) a declaration that the trio, as co-owners of the land, be jointly awarded compensation for acquisition thereof and (iv) ordering an inquiry to unearth the fraud and to initiate appropriate legal proceedings against the persons responsible.
- 11.** *Inter alia*, there is a petition for review (defective) and an application for recall, both at the instance of Vishnu. While the former seeks review of the judgment and order dated 5th May, 2022 of this Court in C.A. No. 3636/2022, the latter seeks recall of an order dated 30th January, 2023 in MA 255/2023 in Civil Appeal 3636/2022.

FACTS

- 12.** Since it is essential to delve deep into the facts for a proper determination of the claims raised by Vishnu against Reddy and the officials of NOIDA, for the sake of clarity and convenience, the full factual details are set out in the table below.

17 th April, 1976	<i>Vide</i> Notification No. 4157 dated 17 th April, 1976 issued under the provisions of the Uttar Pradesh Industrial Area Development Act, 1976, NOIDA was constituted by

declaring large tracts of land comprising of several villages in Gautam Budh Nagar District, including lands in the village of Chhalera Banger.

1985-1986

Between 1985 and 1986, NOIDA acquired a certain portion of land from one Banwari and Bansha Singh and compensation was received by them.

24th April, 1997

The trio jointly purchased a land measuring 5-13-10 Bighas at Khasra No. 422 and 427M of Village Chhalera Banger, Gautam Budh Nagar, for a sum of Rs. 1 crore from Bansa and Banwari Singh. Only 2-18-10 Bighas of land¹⁴ which was un-acquired by NOIDA is the subject of the present proceeding. The names of the trio were entered in the revenue records and the record of rights.

1998

First Suit

The trio instituted a suit¹⁵ seeking a permanent injunction against NOIDA from disturbing their possession and title in the subject land.

16th February, 2000

The trial court by its decree restrained NOIDA from interfering with the possession of the unacquired land admeasuring 2-18-10 bighas.

26th June, 2000

Vide an agreement to sell, Sudhakar purportedly relinquished his share in the subject land to Reddy for Rs. 10 lakh.

¹⁴ subject land

¹⁵ Civil Suit No. 416/1998

2001	Aggrieved, NOIDA carried an appeal ¹⁶ from the trial court's decree dated 16 th February, 2000 before the First Appellate Court.
30 th March, 2001	The First Appellate Court dismissed the civil appeal filed by NOIDA and this decision not being challenged, attained finality.
30 th May, 2001	Sudhakar instituted a civil suit ¹⁷ against Reddy, seeking a declaration of his 1/3 rd share in the subject land.
Second Suit	
31 st May, 2001	Reddy filed his written statement in the said suit. On the same day, a compromise agreement was signed by and between Sudhakar and Reddy, conceding that Reddy was the absolute owner of the land.
12 th September, 2002	The trial court, declaring that the compromise agreement was not <i>bona fide</i> , refused to act upon it.
5 th December, 2002	The civil suit instituted by Sudhakar was dismissed for default by the trial court.
2003-2004	NOIDA introduced a scheme for development of a commercial hub at Sector 18, NOIDA.
11 th November, 2003	Sudhakar requested the Deputy CEO to convert the subject land for use from agricultural to commercial, which was denied on 13 th January, 2004.

¹⁶ Civil Appeal No. 61/2000

¹⁷ Civil Suit No. 283/2001

27 th March, 2004	An office order set the rates for commercial land at Rs. 1,10,000 per sq. metre and for residential land at Rs. 4000 per sq. metre.
2003 – 2005	NOIDA allegedly made several attempts to dispossess the trio from the subject land.
12 th April, 2004	NOIDA issued an acceptance letter to DLF Universal for allotment of the commercial hub.
2005	The trio filed Execution Petition No. 2/2005 for execution of the decree of the trial court dated 16 th February, 2000, restraining NOIDA from dispossessing them from the land.
3 rd February, 2005 Agreement for Sale	Vishnu purportedly executed an Agreement for Sale for his share of the land with Reddy for a sum of Rs. 25 lakh.
3 rd February, 2005 PoA	Vishnu executed a General Power of Attorney (PoA) in favour of one Venkataramana.
25 th February, 2005	NOIDA and DLF Universal entered into a lease deed for Plot No. M-3, Sector 18, NOIDA for a total premium of Rs. 173 crore for an area admeasuring 54,320.18 sq. metre.
2 nd August, 2005	Execution Petition No. 2/2005 was rejected.
4 th August, 2005	The trio, through their power of attorney holders, except for Reddy who was himself present, agreed to sell land

measuring 5-13-10 Bighas in favour of M/s Prabhat Home Pvt. Ltd. for 50% of the undivided share of the entire land, for a consideration of Rs. 13.15 crore.

- 2nd September, 2005 A Notification under Section 4 of Land Acquisition Act, **Land Acquisition** 1894¹⁸ in respect of the subject land was issued.
- 3rd October, 2005 The trio had filed another execution application bearing Execution Application No. 6/2005. This application was rejected on 3rd October, 2005.
- November/December 2005 WP(C) 66797/2005 was filed before the High Court by the trio, challenging the orders dated 2nd August, 2005 and 3rd October, 2005 whereby Execution Petition No. 2/2005 and Execution Application No. 6/2005, respectively, were rejected.
- 22nd November, 2005 A notification under Section 6 of the 1894 Act in respect of the subject land was issued.
- 21st December, 2005 The General Power of Attorney dated 3rd February, 2005 **PoA - Cancellation** was purportedly cancelled by Vishnu.
- December 2005 Vishnu filed WP(C) No. 75152/2005, challenging the land acquisition proceedings initiated by NOIDA authorities.

¹⁸ 1894 Act

28 th April, 2006	WP(C) 66797/2005 filed by the trio was allowed, and the matter was remanded to the executing court to decide whether the land in question stood acquired by NOIDA.
31 st May, 2006	Reddy filed a civil suit ¹⁹ against Vishnu, praying for a declaration that he was the sole owner of the land.
Third Suit	
7 th June, 2006	Vishnu executed a registered agreement for sale, agreeing to sell his 1/3 rd share of the subject land to one Ranbir Singh Narag for Rs. 3 crore.
4 th October, 2006	Vishnu, through his Power of Attorney holder (Venkataramana), filed a written statement in Civil Suit No. 370/2006, admitting Reddy's claims.
4 th October, 2006	A Joint Compromise Application was filed by Reddy and the PoA holder of Vishnu.
	Note: Vishnu argues that Venkataramana had no authority to file the written statement or a compromise application, as the PoA had already been cancelled on 21 st December, 2005.
17 th November, 2006	Civil Suit No. 370/2006, i.e., the third suit, was decreed as per the compromise.
18 th December, 2006	Execution Petitions, which had been remanded, were rejected by the executing court on 1 st August, 2008 because the lands were already acquired by NOIDA.

¹⁹ Civil Suit No. 370/2006

Challenging the rejections, the trio filed WP(C) 70088/2006 on 18th December, 2006. At paragraph 3 (three) of this WP, the trio pleaded that they are the co-owners of the property.

10th December, 2009 While WP(C) No. 75152/2005, filed by Reddy, challenging the land acquisition proceedings was pending, Sudhakar and Vishnu filed impleadment application claiming themselves to be the co-owners of the property. The said application was allowed.

10th December, 2009 WP(C) No. 75152/2005 for compensation was allowed by the High Court in light of the decision of the Uttaranchal High Court in ***Bhoopendra Singh & Ors. v. Awas Vikas Parishad***²⁰.

Note: This Court has upheld the decision of the Uttaranchal High Court in ***Avas Evam Vikas Parishad v. Bhoopendra Singh***²¹.

2010 NOIDA challenged the order of the High Court dated 10th December, 2009 in SLP (C) No. 20196-97/2010.

1st September, 2010 Reddy had Vishnu's name deleted from the land records *qua* the subject land using the compromise decree dated 17th November, 2006. In this regard, Khatauni Entry of

²⁰ 2005 (2) Uttaranchal Decision 295

²¹ (2022) 14 SCC 277

Fasli Year 1407-1412 dated 26th September, 2010 shows Reddy as the sole owner.

- 10th January, 2011 Notice was issued by this Court in the SLP filed by NOIDA, and operation of the impugned judgment dated 10th December, 2009 in WP(C) No. 75152/2005 was stayed. On leave being granted, this SLP was numbered as Civil Appeal No. 731/2013.
- 30th January, 2011 An award for compensation of the subject land was made. This award has not been placed on record.
- 4th January, 2013 Vishnu was served by paper publication but did not enter appearance before this Court.
- 4th November, 2015 Civil Appeal No. 731/2013 filed by NOIDA was dismissed by this Court.
- 2015-17 Reddy made representations to NOIDA and the District Magistrate seeking compensation in terms of the judgment dated 4th November, 2015 passed by this Court.
- 8th January, 2018 The District Magistrate rejected Reddy's representation.
- 22nd October, 2018 Reddy initiated action for contempt by filing Contempt Petition No. 1841-42/2018 in Civil Appeal No. 731/2013 and alleged wilful and deliberate non-compliance with the order dated 4th November, 2015. The petition was

withdrawn with liberty to avail appropriate remedies before the High Court.

17th January, 2019 Pursuant to the liberty granted by this Court, Reddy filed WP(C) 2272/2019 before the High Court praying for:

1. quashing of the order dated 8th January, 2018.
2. quashing of the award dated 31st January, 2011.
3. a declaration that the land acquisition proceedings have lapsed and to direct NOIDA to either initiate fresh land acquisition proceedings or pass a fresh award or hand over possession to Reddy.

7th August, 2020 Vishnu instituted Civil Suit No. 471/2020 before the trial court claiming that the compromise decree dated 17th November, 2006, was null and void.

Fourth Suit

11th October, 2021 Served with summons, Reddy filed his written statement in Civil Suit No. 471/2020. However, it has not been placed on record.

28th October, 2021 The High Court allowed WP(C) 2272/2019 filed by Reddy and accepted the plea that he was the sole owner of the property. The compensation was enhanced from Rs.181.87 per sq. yard (or Rs.152.04 per sq. metre) to Rs.1,10,000 per sq. metre, with a deduction for development charges at 50%, i.e., Rs. 55,000 per sq. metre, along with a 30% solatium and interest @ 15%.

**Impugned order
in C.A. No.
7777/2023**

30 th October, 2021	Aggrieved by the order of the High Court, Reddy challenged the same in SLP (C) No. 19035/2021 which, on leave being granted, was numbered as Civil Appeal No. 3636/2022.
8 th March, 2022	NOIDA filed a counter in Civil Appeal No. 3636/2022.
24 th March, 2022	Aggrieved by enhancement of compensation by the order dated 28 th October, 2021 of the High Court, NOIDA too challenged the same in SLP (C) No. 5500/2022. Upon leave being granted, the SLP was numbered as Civil Appeal No. 3637/2022.
5 th May, 2022	This Court <i>vide</i> a common judgment and order, dismissed the civil appeal filed by NOIDA (C.A. No. 3637/2022) and partly allowed the civil appeal filed by Reddy (C.A. No. 3636/2022), setting aside deduction of the development charges ordered by the High Court.
Challenge to the impugned order was dismissed by this Court	
10 th August, 2022	Review Petition (C) Nos. 874-875/2022 filed by NOIDA were dismissed by this Court.
15 th September, 2022	Due to the financial implications arising out of the order dated 5 th May, 2022, the then CEO, NOIDA issued a letter to the Deputy Secretary, Govt. of Uttar Pradesh seeking guidance from for filing a curative petition.
19 th September, 2022	Vishnu filed IA No. 155895/2022 in C.A. No. 3636/2022 seeking modification of the order dated 5 th May, 2022.

30 th September, 2022	Pursuant to letter dated 15 th September, 2022, the matter was examined by the Law Department and letter dated 30 th September, 2022 was issued to NOIDA requesting that instead of filing a curative petition, an attempt be made to negotiate the compensation amount with Reddy.
7 th October, 2022	A meeting/negotiation took place between NOIDA and Reddy, where they agreed to have the compensation payable reduced from Rs.359 crore to Rs.295 crore, which was paid to Reddy on 28 th December, 2022.
30 th January, 2023	IA No. 155895/2022 in C.A. No. 3636/2022 was disposed of by a Bench of two-Judges [of which one of us (Surya Kant, J.) was a member], granting Vishnu liberty to agitate his claim regarding co-ownership before the Reference Court.
3 rd July, 2023	Vishnu approached this Court with the civil appeal and the writ petition, which are under consideration.
3 rd July, 2023	Vishnu filed MA 1737/2023 in MA 255/2023 in Civil Appeal 3636/2022 seeking recall of order dated 30 th January, 2023.
13 th August, 2023	Vishnu filed a defective Review Petition Diary no. 33040/2023 praying for review of the judgment dated 5 th May, 2022. As the defects were not cured within
MA Diary No. 6013/2024	

(tagged with the present set of matters)

time, registration thereof was declined²² by the Registrar (J-A) *vide* order dated 4th January, 2024. Vishnu filed an appeal²³ against the Registrar's order, registered as MA Diary No. 6013/2024 in Review Petition Diary No. 33040/ 2023. On 24th October, 2024, the Chamber Judge ordered that the said appeal be tagged with Civil Appeal 7777/2023 and the other connected matters.

PROCEEDINGS BEFORE THIS COURT

14th August, 2023

Notice on the special leave petition, writ petition, miscellaneous application as well as on the application seeking condonation of delay was issued by a bench of this Court (cor. Surya Kant and Dipankar Datta, JJ.). Reddy was directed to keep the compensation amount received by him in an FDR and to file affidavits with details of such FDR along with an undertaking not to encash the FDR without prior permission of this Court.

Notice and stay by this Court

21st November, 2023

After noting his pleading that the compensation amount had been invested in immovable properties, Reddy was directed to furnish details of the immovable properties/lands and investments in the business within three weeks. The two-Judge Bench (cor. Surya Kant and

Reference to a larger bench

²² under Order VIII Rule 6(3) and 6(4) of Supreme Court Rules, 2013

²³ under Order VIII Rule 6 (5) of the Supreme Court Rules, 2013

Dipankar Datta, JJ.) condoned the delay in filing the SLP, granted leave to appeal, issued Rule Nisi in the writ petition and considering the issues likely to be raised in the civil appeal directed that these matters be placed before a larger Bench after obtaining necessary orders from the Hon'ble the Chief Justice of India.

10th January, 2024 Vishnu filed Contempt Petition No. 23-24/2024 in WP (C) 673/2023 for violation of the orders dated 14th August, 2023 and 21st November, 2023.

8th May, 2024 This Court disposed of the IAs filed by Reddy seeking recall/modification of orders dated 21st November, 2024 and 14th August, 2023 by directing him to file details of the investments made by him (out of the compensation amount) in a sealed cover, duly signed by him, along with an affidavit/undertaking *inter alia* stating : (i) that he shall not create any third-party rights in respect of the said properties; (ii) that the compensation amount has been invested only in the assets to be disclosed by him in the sealed cover; (iii) that the said assets have been disclosed in his Income Tax Returns; and (iv) that there are no third-party interests or encumbrances on the said assets, and if any exist, the same shall be disclosed.

August 2024	Suo Moto Contempt Petition (C) No. 3 of 2024 was
SMC (C) No. 3/2024 (tagged with the present set of matters)	registered against NOIDA for not having filed the counter affidavit within the time prescribed as per order dated 8 th May, 2024.
September 2024	The civil appeal, the writ petition and the connected matters were heard on several dates.
3 rd October, 2024	This Bench, during the final hearing, opened the sealed cover and, upon perusal of its contents, noted that instead of making full disclosures, Reddy had submitted a vague and misleading certificate from Pradeep Reddy & Co., Chartered Accountants, omitting essential details regarding the parties involved, the nature and manner of the investments, the terms securing such investments, and the particulars of the properties and loans. Accordingly, the affidavit submitted by Reddy was rejected and he was granted one final opportunity to deposit a sum of Rs. 300 crore with the Registry. Reddy was further restrained from entering into any agreement to sell and/or creating any third-party rights in respect of immovable assets owned by him, his family and the companies created by him or his family members. He was also directed to furnish details of all the movable/

immovable assets owned by him, his family and the said companies.

4th November, 2024 Pursuant to the order dated 3rd October, 2024, Reddy filed IAs praying for deposit of title deeds of immovable properties instead of cash deposit.

22nd January, 2025 This Bench allowed Reddy to furnish securities through his partnership firm Manyata-Pristine. Upon conclusion of hearing, judgment was reserved.

IMPUGNED ORDER

- 13.** The impugned order, as noted above, was passed on 28th October, 2021 partly allowing Reddy's writ petition.
- 14.** Reddy, in paragraph 7 of his writ petition, asserted that as on the relevant dates, he owned the subject land privately in light of the decree in Civil Suit No. 416 of 1998 and that the respondents therein had no 'right, title and interest' over the subject land.
- 15.** A reply affidavit was filed by the State of U.P. and its officers; but as is usual with official respondents, they did not go beyond averring that contents of paragraph 7 of the writ petition are not admitted and that the entire land acquisition proceedings, for planned development of NOIDA, were in observance of the 1894 Act.
- 16.** Before the High Court, the parties (namely Reddy as writ petitioner, the State of Uttar Pradesh and seven others as respondents) advanced several arguments and placed various documents on record. Preliminary objections on

the maintainability of the writ petition including, *inter alia*, suppression of facts as well as the locus of Reddy to claim compensation for the subject land without there being a decree in his favour were raised by the respondents therein.

- 17.** Regarding the preliminary objections to the maintainability of the writ petition:
- a. the High Court rejected the same on the ground that Reddy had become the sole owner of the subject land. This observation was premised on the order of the trial court dated 17th June, 2010 under Section 34 of the "Land Revenue Act, 1996" and Reddy's name was, accordingly, entered in the Khatauni.
 - b. On the same premise, the allegation that Reddy had suppressed the order dated 12th September, 2002 whereby the trial court denied to act on the compromise decree was overruled by the High Court in view of the finding of the trial court dated 17th June, 2010.
 - c. The objection of the respondents in the writ petition to the maintainability of the writ petition asserting that a remedy is available under Section 18 of the 1894 Act was overruled by the High Court holding that the writ petition was filed in view of the liberty given by this Court to approach the High Court *vide* order dated 22nd October, 2018.
- 18.** Regarding the quantum of compensation:
- a. The High Court repelled the submission of Reddy that compensation was not determined as per the direction of the High Court and, therefore, the award is to be treated as a nullity so as to apply Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013²⁴ in view of the decision of this Court in ***Indore Development Authority v. Manoharlal (LAPSE-5 J.)***²⁵.

- b. *Qua* the challenge to the award and the prayer for determination of compensation in accordance with law, the High Court held that the award dated 31st January 2011 had been made subject to the final outcome of the appeal filed by NOIDA. Since that appeal was dismissed by this Court on 4th November 2015, the State ought to have passed a fresh award in compliance with the High Court's judgment dated 10th December 2009.
- c. The High Court then proceeded to determine the compensation by referring to the circle rate of Sector 18, NOIDA, i.e., Rs. 1,10,000/- per sq. metre. The High Court also determined that development charges can be to the extent of maximum 50% (fifty percent) and, therefore, held that the State should have taken Rs. 55,000/- per sq. metre as the market value of the land. It was, therefore, ordered accordingly.

BEFORE THIS COURT IN CIVIL APPEAL No 3636-37 OF 2022

19. When the impugned order was challenged before this Court in separate appeals, *vide* ***Reddy Veerana v. State of U.P.***²⁶, the civil appeal filed by NOIDA was dismissed and the civil appeal filed by Reddy was allowed in part. Learned senior counsel representing Reddy before us asserted that this decision has therefore upheld the impugned order. However, on a closer perusal of the case records, it is clear that the adjudication stands on a much

²⁴ 2013 Act

²⁵ (2020) 8 SCC 129

²⁶ (2022) 14 SCC 252

narrower footing. This Court in paragraph 39 of its decision in **Reddy Veerana** (supra) noted that it is merely deciding on the quantum of compensation and not the title of Reddy on the scheduled piece of land. For ease of reference, paragraph 39 is quoted below:

39. In the instant case, since the title of the appellant on the scheduled piece of land has not been contested by the respondents and the adjudication is confined only to the quantum of compensation, we deem it appropriate not to interfere with the findings of the High Court with respect to the ownership...

- 20.** In view of the decision rendered in **Bhoopendra Singh** (supra), this Court held that NOIDA must determine the compensation by taking into consideration the circle rate which has been determined as per the market value, i.e., Rs. 1,10,000/- per square metre. Further, dealing with the issue of deduction of the development charges, this Court held that the High Court failed to consider the contextual circumstances in its decision. Therefore, applying the ratio of previous decisions, this Court concluded that NOIDA's actions, i.e., the passing of the award after a delay of five years from the date of taking possession, was a violation of Article 300-A of the Constitution, leading to a constitutional tort. Thus, taking note of the aforesaid and in the peculiar facts of the case, it was directed that in addition to the statutorily paid interest, the additional amount of penal interest must be paid in place of shifting the date for determination of the amount of compensation or to determine the compensation as per the 2013 Act, as demanded by Reddy.

CONTENTIONS**ARGUMENTS BY VISHNU**

- 21.** The principal submission advanced by learned senior counsel for Vishnu is that the impugned order, along with all other orders obtained by Reddy through misrepresentation and suppression of material facts, ought to be treated as *void ab initio*, relying on the settled legal proposition that "*fraud unravels everything*".
- a. Our attention was drawn to various documents on record indicating that Reddy has taken inconsistent and mutually contradictory positions regarding the extent of his ownership over the property. While he jointly prosecuted various litigation from 2001 till 2019 along with Vishnu and Sudhakar, he asserted sole ownership in other proceedings.
 - b. The written statement filed by Venkataramana, acting as Vishnu's power of attorney holder, admitting Reddy's sole ownership of the property, was without authority, as such power granted in Venkataramana's favour had been cancelled long before institution of Civil Suit No. 370/2006. It has also been shown that Venkataramana is a partner of Reddy in the partnership firm that offered securities before this Court.
 - c. Using this fraudulent decree dated 17th November 2006, Reddy managed to have his name mutated in the revenue records.
 - d. Even after the decree, Reddy filed several pleadings claiming to be the joint owner of the land.
 - e. The existence of the said decree was consistently suppressed by Reddy before the courts.

22. As regards the quantum of compensation for the acquisition, it was submitted on behalf of Vishnu that relegating the matter back to the Collector or the Reference Court for computation after a lapse of two decades would be unjust. It has been urged that the subject land should be treated as commercial in nature, and compensation should be awarded accordingly.
23. On this basis, Vishnu has sought that the impugned order, insofar as it records findings with respect to the ownership of the subject land, be set aside.

ARGUMENTS BY REDDY

24. At the outset, maintainability of this civil appeal and the connected writ petition has been challenged by Reddy on various grounds including the fact that:
 - a. Vishnu has sought apportionment of the subject land prior to getting the registered Power of Attorney dated 3rd February 2005, full settlement agreement dated 3rd February 2005 and decree of the Trial Court dated 17th November, 2006, nullified. Even though Vishnu instituted CS No. 471/2020 praying that the compromise decree dated 17th November, 2006 be declared null and void, he has not sought any monetary compensation in the aforesaid suit and has, therefore, bypassed the Trial Court in approaching the Supreme Court only to save the payment of the court fee which smacks of *mala fide*;
 - b. Vishnu has engaged in 'forum shopping' as he has been pursuing various types of proceedings before this Court as well as instituted a civil suit before the Trial Court;
 - c. This Court does not have the original jurisdiction to adjudicate complicated questions of fact under Article 131 of the Constitution;

- d. Relying on the decision in ***Nidhi Kaim*** (supra), it is submitted that this Court does not have the jurisdiction to decide an “intra-court appeal”;
- e. The order dated 21st November, 2023 of this Court referring the matter to a three-Judge Bench is against the established principle of *stare decisis* as the reference order included not just questions of law but complicated questions of fact;
- f. The writ petition filed by Vishnu is not maintainable as against the order of this Court dated 5th May, 2022 - much less when there is no violation of any Fundamental Right alleged in the said writ petition - since judicial orders of the Supreme Court cannot be challenged in the writ jurisdiction before this Court itself;
- g. The order of the High Court has now merged with the final order of this Court and, therefore, the civil appeal filed by Vishnu is not maintainable, and that the doctrine of merger would apply;
- h. This Court does not have the jurisdiction to conduct a review of a judgment through a miscellaneous application, much less in a second miscellaneous application, by placing reliance on Order XLVII, Rule 5 of the Supreme Court Rules, 2013²⁷;
- i. The listing of the review and chamber appeal is in clear violation of Order XLVII, Rule 3 of the SC Rules, 2013; and

²⁷ SC Rules, 2013

- j. Vishnu is a chronic litigant coming with unclean hands as he has engaged in suppressing material documents before this Court and has played fraud upon this Court.

25. On merits, it has been argued before us that:

- a. Reddy has perfected his title through the decree of the Trial Court dated 17th November, 2006 in CS No. 370 of 2006. Moreover, Vishnu sold off his entire property to a third party, Ranbir Singh, *vide* a registered agreement to sell dated 7th June, 2006 while suppressing the earlier sale made to Reddy;
- b. The principle that fraud vitiates every proceeding is subservient to the principle of *interest rei publicae, ut sit finis litium*. It was specifically contended that Reddy has not played any fraud by not making Vishnu a party to the previous litigation;
- c. On the contrary, fraud has been played upon Reddy as Vishnu has not disclosed material documents;
- d. *Vide* decree dated 17th November, 2006, the interest in the subject land passed from Vishnu to Reddy which to this day stands as a valid instrument;
- e. The three deeds, namely, the full settlement sale agreement, Affidavit/declaration and the Registered Power of Attorney must be read together as part of the same transaction;
- f. A registered document can only be cancelled/modified by another registered document; in the instant case, the registered irrevocable Power of Attorney dated 3rd February, 2005 could not have been cancelled without registering the document of cancellation;

- g. Moreover, no notice of cancellation was provided to Venkataramana and, therefore, it is not a valid cancellation as per Section 208 of the Indian Contract Act, 1872 and Section 3 of the Power of Attorney Act, 1882;
- h. Furthermore, a registered Power of Attorney cannot be revoked unilaterally;
- i. Vishnu is estopped from re-agitating the issue on title as he has relinquished his entire share of the property; and
- j. Lastly, NOIDA has no right to re-agitate the dispute on merits collaterally.

ARGUMENTS BY NOIDA

26. NOIDA has argued before us that:

- a. The doctrine of merger is not applicable when the order of the Court is vitiated by fraud and that fraud is an exception to the rule of *stare decisis*;
- b. This Court exercises plenary powers to prevent the abuse of process and to meet the ends of justice under Article 129 of the Constitution;
- c. The landowners must be relegated to the reference court under Section 18 of the 1894 Act for determining compensation; and
- d. The High Court and this Court committed a grave legal and factual error by ignoring vital evidence in the form of exemplar sale deeds of the subject land for determining the true and actual market value for assessment of quantum of compensation.

27. In consequence thereof, NOIDA has prayed for recalling the orders of the High Court dated 28th October, 2021 and of this Court dated 5th May, 2022 in exercise of the powers under Article 142 of the Constitution and to revisit the enhanced compensation of Rs.1,10,000/- per sq. metre or to direct the landowners to approach the appropriate court under the 1894 Act.

REPLY BY VISHNU REGARDING OBJECTIONS TO MAINTAINABILITY

- 28.** In response to the objections raised regarding the maintainability of the present set of petitions, Vishnu submitted that:
- a. Through the present proceedings, he is not seeking to appeal the judgment dated 5th May 2022 and is, therefore, not invoking the appellate jurisdiction of this Court but rather its inherent jurisdiction to prevent a gross miscarriage of justice;
 - b. The provisions of the SC Rules—particularly Order LV Rule 6—preserve the inherent powers of this Court to prevent the abuse of the court’s process;
 - c. Fraud constitutes an exception to the doctrine of merger;
 - d. The doctrine of merger is also inapplicable in the present case, as Vishnu was not a party before the High Court; and
 - e. The writ petition is maintainable not only on the basis of infringement of the right under Article 300-A of the Constitution of India, 1950²⁸, but also because Vishnu’s rights of access to justice and to a fair, equal, and transparent judicial process are at stake.

ISSUES

- 29.** On maintainability,
- a. whether the impugned order having merged with this Court’s order dated 5th May 2022 in **Reddy Veerana** (supra), as claimed by Reddy, renders the present appeal – which, so to say, lays a collateral challenge to an order of this Court itself – not maintainable?

²⁸ Constitution

- b. whether the present writ petition is not maintainable, as it seeks to challenge a judicial order which, by its very nature, can never be said to violate Fundamental Rights?
 - c. whether Vishnu can pursue a civil appeal against the impugned order as well as a petition for review of the decision of this Court in which the impugned order has merged, as claimed, simultaneously?
 - d. Whether Vishnu has engaged in forum shopping?
- 30.** Whether Reddy obtained the impugned order, as well as this Court's order dated 5th May 2022 in **Reddy Veerana** (supra), by practising fraud and deception upon the courts and, therefore, the same deserve to be set aside/recalled?
- 31.** Should the answer to the above issues be in favour of Vishnu and against Reddy, what would be the appropriate order to be passed in these proceedings having regard to the peculiar facts and circumstances?

ANALYSIS

- 32.** We begin with recording the realisation that undoubtedly, there seems to be much more than what have met our eyes. However, like all courts, we are bound to decide cases based on the evidence on record, judicially noticeable facts, and the applicable law. Despite Reddy and Vishnu – and to certain extent Sudhakar – having used the judicial process obviously to secure their personal interests, we cannot be a bystander. If things have happened with a telling effect on public interest, resulting in public funds from the public exchequer being drained, the same has to be dealt with within the bounds of our

jurisdiction. In our pursuit for the truth and to uphold the rule of law, we must adhere to established principles unless a valid reason warrants deviation.

33. Vishnu, as can be gathered from the narrative of events, has not left any stone unturned to have the benefits accruing in favour of Reddy undone. The sheer number of proceedings instituted by Vishnu bear testimony to his struggle to set at naught all such orders that operate to his detriment. Apart from the civil appeal against the impugned order and a writ petition under Article 32 seeking enforcement of what, Vishnu calls infringement of his Fundamental Rights, he has *inter alia* pursued the alternate channel of filing a petition (which is defective) for review of the decision in **Reddy Veerana** (supra), an application for modification/recall of the order of this Court relegating him to the remedy under the 1894 Act and a petition for contempt of this Court's order. The multiplicity of proceedings in this particular case raises a reasonable apprehension that the legal process, including this Court's, is being potentially abused by Vishnu. While, in no uncertain terms has Reddy asserted that Vishnu has indulged in abuse, we need to carefully assess whether it is Vishnu or Reddy, or both, who is/are the real abuser(s).

34. While judicial consuetude ordinarily mandates that we begin with a threshold examination of the issue of maintainability, the *sui generis* features of the present case impel us to first address the core allegation levelled by Vishnu of fraud having been committed by Reddy. We find that the question of maintainability, in the present case, is a mixed question of fact and law which, ideally, ought to be determined after adjudicating the question of alleged fraud played by Reddy on the courts. We draw support for this approach from the

decision of this Court in **Ramesh B. Desai v. Bipin Vadilal Mehta**²⁹ where, dealing with Order XIV, CPC, it was observed as under:

13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

“Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

(emphasis ours)

35. Recently in **Sathyanath v. Sarojamani**³⁰, this Court after analysing judgments rendered by various High Courts and also **Ramesh** (supra) made the following observations:

21. The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable

²⁹ (2006) 5 SCC 638

³⁰ (2022) 7 SCC 644

law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

* * *

23. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in *Ramesh B. Desai* [*Ramesh B. Desai v. Bipin Vadilal Mehta*, (2006) 5 SCC 638] that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of the Court” and (b) which deal with the “bar to the suit created by any law for the time being in force”. The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

(emphasis ours)

- 36.** We shall therefore decide the issue of maintainability after examining the allegation of fraud.

I. HAS REDDY PLAYED FRAUD ON THE COURTS?

- 37.** Upon due consideration of the entire factual matrix, some notable facts stand out which, we believe, are appropriate to highlight.
- 38.** At the inception, the trio – Vishnu, Reddy and Sudhakar – stood as a united front. They consistently projected themselves as co-owners of the property in question in multiple judicial proceedings:
- a. in 1998, claiming to be the owners of the property, the trio jointly instituted a suit³¹ seeking a permanent injunction against NOIDA.
 - b. upon securing a decree, they together filed an execution application³².
 - c. they jointly pursued a writ petition³³ challenging rejection of their execution application.

³¹ Civil Suit No. 416/1998

³² Execution Application No. 6/2005

³³ WP (Civil) 66797/2005

- d. even when Vishnu singly assailed the land acquisition proceedings in a writ petition³⁴, Reddy and Sudhakar filed an impleadment application reaffirming the narrative of joint ownership.
- e. NOIDA, in its appeal³⁵ before this Court, arrayed the trio as respondents and not once did Reddy assert exclusive ownership during these proceedings.

39. Contrary to the consistent earlier stance, Reddy, in a complete *volte-face*, asserted his sole ownership of the property in not one but multiple judicial proceedings:

- a. in 2001, Sudhakar sued³⁶ Reddy, seeking his 1/3rd share in the land. Curiously, the written statement was filed the very next day, and even more curiously, a compromise agreement was filed a day later. The Trial Court, sceptical of this sudden turn of events, rejected the compromise finding its *bona fides* questionable. Ultimately, the suit was dismissed for default as Sudhakar did not pursue it further.
- b. in 2006, Reddy sued³⁷ Vishnu, claiming to be the sole owner. This suit took a particularly curious turn when one Venkataramana, claiming to be Vishnu's Attorney, filed a written statement admitting the claim. However, records reveal that the Power of Attorney had already been cancelled on 21st December, 2005, a full six months prior to the suit being instituted. Worse still, pursuant to the documents having been filed in the Court by Reddy, it

³⁴ WP (Civil) 75152/2005

³⁵ Civil Appeal No. 731/2013

³⁶ Civil Suit No. 283/2001

³⁷ Civil Suit No. 370/2006

has surfaced that Venkataramana is also a partner of Reddy in the firm Manyata-Pristine.

- c. Finally, in January 2019, Reddy once again laid exclusive claim to the subject land asserting himself as the sole owner in a writ petition³⁸ before the High Court, challenging the District Magistrate's decision to deny him compensation. *Vide* the impugned order, his claim was allowed by the High Court.

- 40.** In a judicial landscape that values consistency and candour, this case strikes a discordant note. This trajectory of the contradictory claims made by Reddy can hardly be ignored by this Court.
- 41.** The impugned order was passed on a writ petition presented by Reddy, wherein he challenged the District Magistrate's refusal to grant compensation for the acquired land and simultaneously sought a declaration of his exclusive ownership. The High Court accepted his claim *albeit* based on material which was scant, information that was incomplete and knowledge appearing to be fragmentary.
- 42.** Considering Reddy's consistent stance in earlier proceedings that the property was jointly owned with Vishnu and Sudhakar, his failure to implead them in the writ petition is appalling, if not more. This, in our view, was a calculated attempt by Reddy to wrongfully appropriate the entire property keeping the other two – Vishnu and Sudhakar – in the dark.

³⁸ WP (Civil) 2272/2019

- 43.** Although the provisions of the CPC do not apply to writ proceedings *ex proprio vigore*, the principles flowing therefrom, as far as practicable, can be made applicable. Order I Rule 9, CPC, as originally enacted, ordained that a suit shall not be defeated by reason of misjoinder or non-joinder of parties; however, after its amendment in 1976 introducing the proviso, the implication is that non-joinder of a party could, in a given case, prove fatal for the right to relief claimed by the plaintiff, more so when a necessary party is not impleaded, and defeat the suit. Although Order I Rule 10 does empower a court to implead at any stage of the proceedings a party who should have been joined as a defendant, either upon or without the application of either party, a decree passed by the court in the absence of a necessary or proper party to the suit and affecting his interest could be avoided by such party; however, if the decree is such that it acknowledges and declares the right of the decree-holder to the subject matter of the suit and entitles him to its benefits, such a decree has to be carried either in appeal or review by the affected non-party to divest the decree-holder of whatever the decree entitles him to.
- 44.** Insofar as writ proceedings are concerned, it is no longer *res integra* that any order made on a writ petition affecting the interest of a party who has not been arrayed as a respondent could be invalidated on the ground of breach of natural justice.
- 45.** We may profitably refer to the decision in ***Poonam v. State of U.P.***³⁹. Although the decision was rendered in connection with a selection process for

³⁹ (2016) 2 SCC 779

allotment of a fair price shop, this Court after analysing various previous decisions emphasised:

21. We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind the proviso to Order 1 Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.

- 46.** A reference may further be made to the decision in ***Ajay Ishwar Ghute and Ors. v. Meher K. Patel and Ors.***⁴⁰ wherein a Bench of two-Judges [of which one of us (Ujjal Bhuyan, J.) was a member] in an appeal against an order made under Article 226 of the Constitution, held thus:

21. In the facts of the case, the senior district-level officials of the State had stated on oath that the construction of the compound wall, in respect of which relief was sought in the Writ Petition, would affect the rights of several third parties. However, the Court completely ignored the same. Even in clause 6(iii) of the "Minutes of Order", there was enough indication that the compound wall, if not appropriately constructed, would affect the rights of owners of the other lands. Therefore, it was the duty of the Court to have called upon the 1st and 2nd respondents to implead the persons who were likely to be affected. The 1st and 2nd respondents could not have pleaded ignorance about the names of the concerned parties as they have referred to the owners of the other lands in the "Minutes of Order". However, the Division Bench of the High Court has failed to make even an elementary enquiry whether third parties will be affected by the construction of the compound wall under police protection. Hence, the order dated 16th March 2022 passed in the Writ Petition in terms of the "Minutes of Order" is entirely illegal and must be set aside. The Writ Petition will have to be remanded to the High Court to decide the same in accordance with the law.

- 47.** More generally, there are umpteen number of decisions of this Court wherein the rights of a third party have been protected in civil litigation. This principle was specifically noted in respect of claims arising out of land acquisition in the

⁴⁰ 2024 SCC OnLine SC 681

case of ***Neyvely Lignite Corpn. Ltd. v. Special Tahsildar (Land Acquisition) Neyvely***⁴¹ as follows:

12. It is true that Section 50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference under Section 18 as it was specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal under Section 54. We cannot limit the operation of Section 3(b) in conjunction with sub-section (2) of Section 50 of the Act within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from *Himalayan Tiles case* [(1980) 3 SCC 223 : (1980) 3 SCR 235] is that the beneficiary, i.e., local authority or company, a cooperative society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Article 226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution.

13. The reasons are not far to seek. It is notorious that though the stakes involved are heavy, the Government plead or the instructing officer do not generally adduce, much less proper and relevant, evidence to rebut the claims for higher compensation. Even the cross-examination will be formal, halting and ineffective. Generally, if not invariably the governmental agencies involved in the process take their own time and many a time in collusion, file the appeals after abnormal or inordinate delay. They remain insensitive even if the States

⁴¹ (1995) 1 SCC 221

(sic Stakes)involved run into several crores of public money. The courts insist upon proper explanation of every day's delay. In this attitudinal situation it would be difficult to meet strict standards to fill the unbridgeable gaps of the delay in filing the appeals and generally entails dismissal of the appeals at the threshold without advertng to the merits of the hike in the compensation. On other hand if the notice is issued to the local authority etc. it/they would participate in the award proceedings under Sections 11 and 18, adduce necessary and relevant evidence and be heard before the Collector and the court before determining compensation. For instance that without considering the evidence in the proper perspective, the court determined the compensation.

14. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who would be the affected person? Is it not interested to see that the appellate court would reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined market value at Rs 1,00,000 while the prevailing market value of the land is only Rs 10,000. Who is to bear the burden? Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court under Section 18 or in an appeal under Section 54, it/they would be interested to defend the award under Section 11 or Section 26 or would file an appeal independently under Section 54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court under Section 18 or in appeal under Section 54 etc. Considered from this perspective we are of the considered view that the appellant-Company is an interested person within the meaning of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1 Rule 10 of the CPC. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

- 48.** However, it is clarified that we do not seek to make any opprobrious remarks against the High Court as it was incumbent upon Reddy to implead Vishnu and Sudhakar as respondents in his writ petition and the High Court could not have been expected to know the long-standing disputes or the fact that Reddy had procured change in the revenue records on the basis of the compromise decree whereupon further proceedings between Vishnu and Reddy in the shape of a suit were pending unless the same was brought to its notice.

- 49.** In any event, having regard to the events preceding presentation of the writ petition by Reddy, out of which the present proceedings have arisen, we have no hesitation to hold that Reddy tailored a situation to suit his convenience by not impleading Vishnu as a party with the sole intention of obtaining an order in respect of not only the quantum of compensation payable for acquisition of the subject land but also a declaration as to his entitlement thereto – all, behind Vishnu’s back. An attempt by Reddy to steal a march over Vishnu is clearly discernible which, without reference to anything more, does border on fraud.
- 50.** Moving ahead, it is equally well settled that suppression of even a single material fact can be fatal before writ courts. In this context, one may usefully refer to the decision of this Court in ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar***⁴² where the law has succinctly been stated as follows:
- 13.** As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken ...
- (emphasis ours)
- 51.** In the present case, Reddy's failure before the High Court to disclose the earlier series of litigation - where he consistently asserted joint ownership with Vishnu and Sudhakar - being a fact having a bearing on the merits of the case, is alone sufficient to vitiate the impugned order.

⁴² (2004) 7 SCC 166

- 52.** However, the concealment runs deeper. It stems from the suit⁴³ that Vishnu had instituted on 7th August, 2020, referred to hereafter.
- 53.** During the pendency of the writ petition (in which the impugned order was passed), Vishnu instituted the suit praying to declare the compromise decree dated 17th November, 2006 as null and void on the ground that the written statement (admitting Reddy's sole ownership over the property) filed by Venkataramana on his behalf was without any authority as the Power of Attorney in his favour already stood cancelled. Reddy filed his written statement in that suit on 11th October 2021 – which is 17 (seventeen) days before the High Court disposed of the writ petition. Despite being a party to the suit, Reddy chose not to inform the writ court of pendency of the suit. Notably, the decree dated 16th February, 2000 in the suit⁴⁴ instituted by the trio and the change in the land records based on the compromise decree dated 17th November, 2006 in the suit⁴⁵ instituted by Reddy were relied on by Reddy to have a ruling in his favour. As per the records available from the website of the High Court, it is noted that judgment was reserved on 6th October, 2021. Therefore, between 7th August, 2020 (date of institution of the fourth suit) and 28th October, 2021 (date of the impugned order), ample opportunity was available for Reddy to disclose the factum of a suit having been instituted by Vishnu. This deliberate suppression, of a material fact, further highlights the fraudulent intent behind Reddy's claim.

⁴³ Civil Suit No. 471/2020

⁴⁴ Civil Suit No. 416/1998

⁴⁵ Civil Suit No. 370/2006

54. As discerned above, suppression of material facts before the High Court by Reddy is writ large; however, his fraudulent conduct is not confined to that forum alone.
55. It has not been shown to us by Reddy that during the course of the proceedings before this Court leading to the decision in **Reddy Veeranna** (supra), this Court was informed of institution of the suit by Vishnu. In fact, this Bench discovered the pendency of such suit solely through examination of the related documents and proceedings.
56. Another instance – though ultimately unsuccessful – that underscores Reddy’s fraudulent conduct is the suit⁴⁶ instituted on 30th May, 2001, i.e., the first suit. In this suit, which was filed just two days before the summer vacation of the court, Sudhakar sought a declaration of his 1/3rd ownership in the land. Curiously, despite acknowledging in paragraph 3 of the plaint that the property was jointly owned by three individuals, Vishnu, the third co-owner, was not made a party to the suit. What followed reveals the dubious conduct of Reddy. The very next day, Reddy filed his written statement, outright denying Sudhakar’s claims and asserting exclusive ownership. He contended that he alone paid the full sale consideration, and that Sudhakar’s name was included in the sale deed merely due to his status as a practicing advocate, whose help was needed in official dealings.
57. Interestingly, on the very same day, Reddy and Sudhakar filed a compromise agreement in which Sudhakar unconditionally admitted Reddy’s sole

⁴⁶ Civil Suit No. 283/2001

ownership. However, the trial court, rightly suspicious of the extraordinary speed at which the pleadings and the compromise agreement were filed, questioned the *bona fides* of the agreement and refused to act upon it. Subsequently, neither party pursued the matter, and the suit was dismissed for default on 5th December 2002.

58. It is almost unprecedented for a written statement and a compromise to be filed the day after a suit is instituted. Even more astonishing is Sudhakar's complete and unopposed surrender of his claim without any explanation, and notably, without impleading the third co-owner, Vishnu. The moment the trial court declined to endorse the compromise, both of them lost interest in the case and the suit was ultimately dismissed for default. This sequence: rapid pleadings, exclusion of a necessary party, and abandonment of the suit clearly reflects a collusive effort by Reddy to manufacture support for his claim of sole ownership (emphasis ours). While Reddy's conduct before the High Court reveals fraud, this episode confirms that his deceptive practices date back over two decades.

59. Another instance of somewhat shady dealings stem from the fact of filing of a written statement before the trial court by Venkataramana, acting as Vishnu's Attorney, whereas it is Vishnu's claim that the Power of Attorney was cancelled by the time the written statement was filed. Having regard to the ultimate order proposed to be passed, we do not wish to make any factual determination as to whether the Power of Attorney stood cancelled or not as on the relevant date or even if cancelled, whether the due procedure was followed; however, suffice it to note that Venkataramana, in course of the

proceedings before this Court, has been discovered to be a partner with Reddy in their firm Manyata – Pristine and it is this firm which offered securities before this Court as recorded in the order dated 21st January, 2025.

60. Be that as it may, obtaining of the impugned order by Reddy in his favour by playing fraud on the High Court is conspicuous by its presence. Thus, we find Vishnu's core argument to be creditworthy and compelling for us to hold that judicial orders procured by Reddy by subverting the judicial process through fraud and concealment of material facts cannot be permitted to stand.

61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:

a. In ***United India Insurance Co. Ltd. v. Rajendra Singh***⁴⁷, this Court reiterated that fraud unravels everything:

3. "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language 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" (Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)]).

b. In ***Shrisht Dhawan (Smt) v. Shaw Bros.***⁴⁸, it was held:

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In *Black's Legal Dictionary*, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal

⁴⁷ (2000) 3 SCC 581

⁴⁸ (1992) 1 SCC 534

right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.....

c. In **A.V. Papayya Sastry v. Govt. of A.P.**⁴⁹, this Court held:

21. 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."

22. 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 the law. Such a judgment, decree or order—by the first court or by the final court—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.

23. ***

24. 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.

25. 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 patrocinar debent*).

d. The judgment by Denning, L.J. in **Lazarus Estates Ltd.** (supra), which has since been quoted with approval by this Court in a catena of decisions including **Nidhi Kaim** (supra), asserted intolerance for fraud in legal proceedings in the following words:

No court ... will allow a person to keep an advantage which he has obtained by fraud. [...] Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever....

⁴⁹ (2007) 4 SCC 221

- 62.** We are also mindful of the legal principle that if a fact could have been discovered through the exercise of due diligence, its non-disclosure does not constitute *suppressio veri* or *suggestio falsi*. Profitable reference may be made to the decision in ***Shri Krishnan v. Kurukshetra University***⁵⁰ where this Court observed that “where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved”. It would neither be a case of *suggestio falsi* nor *suppressio veri*.
- 63.** However, the circumstances of the present case clearly indicate that the fact of Vishnu being a co-owner of the property could not have been discovered by either the High Court or this Court unless the same were placed before such courts. Reddy having conducted himself throughout in a fraudulent manner and with intent to deceive not only Vishnu but also the High Court could not be expected to lay bare all previous transactions and proceedings. As is usual with statutory authorities, not much was also expected of NOIDA. Corruption of a large scale in payment of compensation has not gone unnoticed by this Court for which a *suo motu* contempt action has been initiated. Since proceedings are pending, we wish to leave it at that. However, what is important for the present purpose is the overarching element of fraud in which Reddy indulged with impunity.
- 64.** In light of the above discussion, we feel no hesitation to hold that given the deception involved, the impugned order and the decision of this Court dated

⁵⁰ (1976) 1 SCC 311

5th May, 2022 in **Reddy Veerana** (supra) procured by Reddy are tainted by fraud and, thus, lack legal sanctity and validity.

II. MAINTAINABILITY

65. We now propose to deal with the arguments raised by learned senior counsel for Reddy relatable to maintainability of this writ petition and civil appeal as well as the other applications filed by Vishnu. We propose to deal with them in detail considering the labyrinthine and peculiar facts presented before us.

A. MAINTAINABILITY OF THE WRIT PETITION

66. Learned senior counsel for Reddy has vociferously contended that the writ petition under Article 32 presented by Vishnu is not maintainable on the twin grounds that (i) the writ petition makes no mention of violation of any Fundamental Right and (ii) no writ petition can lie against a judicial order.

67. Writ jurisdiction in India, as is well known, emanates from two articles of the Constitution – Articles 32 and 226. The latter pertains to writ jurisdiction exercisable by the various High Courts in the country while the former confers jurisdiction on the Supreme Court to issue writs/orders/directions for enforcement of the Fundamental Rights, guaranteed by the Constitution. Since the High Courts are empowered under the Constitution to enforce legal rights, apart from Fundamental Rights, the power conferred under Article 226 is considered to be more expansive compared to the power under Article 32.

68. It is axiomatic that merely because a litigant barely pleads in his writ petition before this Court that any of his Fundamental Rights has been breached would not entitle him to maintain a petition under Article 32 of the Constitution. What is additionally necessary for him to plead is the nature of breach of

Fundamental Right, actual or apprehended, and the (likely) consequence thereof.

69. The importance of pleadings in a writ petition under Article 32 was highlighted by this Court in ***Amina Marwa Sabreen v. State of Kerala***⁵¹ as follows:

14. Reverting to the preliminary objections raised by the respondent State, as already mentioned above, there is no reference to the G.O. in the entire writ petition. This document is not even part of the writ petition. Therefore, there are no foundational facts and/or pleadings in the writ petition challenging this G.O. as unconstitutional. More importantly, there is no prayer in the writ petition seeking quashing of this G.O. Even when the learned counsel for the State had pointed out fundamental infirmity in the writ petition, no attempt was made by the petitioners to amend the writ petition so as to incorporate challenge to the said G.O. as well. In the absence of any pleadings and the prayer seeking quashing of the said G.O., it is not permissible for the petitioners to seek a relief by making oral submissions in this behalf.

(emphasis ours)

70. For a writ petition under Article 32 of the Constitution to be entertained, the petitioner has to run a case establishing *prima facie* violation or imminent threat of violation of any Fundamental Right. In this context, some relevant judicial pronouncements are discussed below.

- a. In ***D.A.V. College v. State of Punjab***⁵², this Court held:

44. We have already found that none of the provisions of the Act offend any fundamental rights of the petitioners. But it is contended on behalf of the petitioners that in a petition under Article 32 once it is alleged and a *prima facie* case is made out that the fundamental rights of a citizen are threatened or violated this Court is not only bound to entertain it for determining to what extent the allegation is valid but is also bound to go into the question, if raised, that the law under which it is alleged that his fundamental right is infringed is invalid on the ground of want of legislative competence. There are two facets to this submission. Firstly, whether ultimately any fundamental right in fact is threatened or violated, so long as a *prima facie* case of such a threat or violation is made out a petition under Article 32 must be entertained. Secondly, once it is entertained irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. While the first proposition is valid, the second is not.

⁵¹ (2018) 14 SCC 193

⁵² (1971) 2 SCC 269

46. It is apparent therefore that the validity or the invalidity of the impugned law, on the ground of legislative competence should purport to infringe the fundamental rights of the petitioner as a necessary condition of its being adjudicated. But if in fact the law does not, even on the assumption that it is valid, infringe any fundamental rights, this Court will not decide that question in a petition under Article 32. The reason for it is obvious, namely, that no petition under Article 32, will be entertained if fundamental rights are not affected and if the impugned law does not affect the fundamental rights it would be contrary to this principle to determine whether that law, in fact, has legislative competence or not.

(emphasis ours)

b. In ***Amrit Lal Berry v. CCE***⁵³, a coordinate Bench of this Court had the occasion to rule that:

11. [...] But, we may point out here that a mere failure to apply a rule which ought to have been applied may not, by itself, justify an invocation of the powers of this Court under Article 32 of the Constitution. In order to succeed in a petition under Article 32 of the Constitution the petitioner has to disclose how his fundamental right has been infringed by a particular rule or decision or its application. The impact of the Rule or decision upon the facts of each petitioner case has to be clearly brought out.

12. In the cases before us, the fundamental rights alleged to be violated could only be the general ones embraced by Article 16(1) of the Constitution which reads:

"There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

Where a petitioner alleges that he has been denied equality of opportunity for service, during the course of his employment as a government servant, it is incumbent upon him to disclose not only the Rule said to be infringed but also how this opportunity was unjustifiably denied on each particular occasion. The equality of opportunity in a matter relating to employment implies equal treatment to persons similarly situated or in the same category as the petitioner. It postulates equality of conditions under which a number of persons belonging to the same category compete for the same opportunities and a just and impartial application of uniform and legally valid standards in deciding upon competing claims. It does not exclude justifiable discrimination.

(emphasis ours)

c. In ***Ramdas Athawale (5) v. Union of India***⁵⁴, it was observed by this Court that:

46. It is equally well settled that Article 32 of the Constitution guarantees the right to a constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement

⁵³ (1975) 4 SCC 714

⁵⁴ (2010) 4 SCC 1

of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. In *Northern Corpn. v. Union of India* [*Northern Corpn. v. Union of India*, (1990) 4 SCC 239] this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 is attracted.

(emphasis ours)

d. In ***Harbhajan Singh v. State of Haryana***⁵⁵, this Court referring to the decisions in ***D.A.V. College*** (supra) and ***Ramdas Athawale*** (supra) observed as follows:

11. But the above decisions do not wholly support the stand of the respondents. This Court in *D.A.V. College* [*D.A.V. College v. State of Punjab*, (1971) 2 SCC 269] has held that there are two aspects. The first is whether ultimately any fundamental right in fact is threatened or violated. So long as a prima facie case of such a threat or violation is made out, a petition under Article 32 must be entertained. Second, once it is entertained, irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded, the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. [The Constitution Bench in *D.A.V. College* [*D.A.V. College v. State of Punjab*, (1971) 2 SCC 269], further held that while the first proposition is valid, the second is not. Thus, the entertainment of the writ petition does not mean that this Court has to examine the impugned legislation or legislative competence if the same is not found to be infringing fundamental rights.

- 71.** Furthermore, the right to seek an effective legal remedy for an infringed right is part of the right to life enshrined under Article 21 of the Constitution. One may make a profitable reference to the decisions in ***Anita Kushwaha v. Pushap Sadan***⁵⁶ and ***Kishan Chand Jain v. Union of India***⁵⁷ for the same.
- 72.** Since the 1970s, interpretation of the Constitution, particularly Fundamental Rights, has undergone a significant transformation. Through dynamic and evolving interpretations, various aspects of equality, life and freedom have been recognised and expanded to reflect the changing needs of society.

⁵⁵ (2023) 11 SCC 693

⁵⁶ (2016) 8 SCC 509

⁵⁷ 2023 SCC OnLine SC 1334

73. We are, at this stage, reminded of what this Court held in ***Express Newspapers (P) Ltd. v. Union of India***⁵⁸ while negating a challenge to the interpretation placed on Article 14 in ***E.P. Royappa v. State of T.N.***⁵⁹, ***Maneka Gandhi v. Union of India***⁶⁰ and ***Ramana Dayaram Shetty v. International Airport Authority of India Ltd.***⁶¹ that all governmental actions, which are not supportable by law, would be *per se* violative of Article 14 of the Constitution. Excerpts from paragraph 70 read as follows:

70. [...] it is urged that the content of Article 19(1)(a) of the Constitution would not include the right which is guaranteed by other clauses of Article 19. According to the learned counsel, it must therefore logically follow that what facilitated the exercise of a fundamental right did not for that reason become a part of the fundamental right itself. He read out different passages from the judgments of Bhagwati, J. in *E.P. Royappa v. State of T.N.*, *Maneka Gandhi v. Union of India* and *Ramana Dayaram Shetty v. International Airport Authority of India Ltd.* and endeavoured to show, to use his own language, that “in spite of some literal flourish in the language here and there, they did not and could not depart from the ambit of Article 14 which deals with the principle of equality embodied in the Article”. He was particularly critical of the *dictum* of Bhagwati, J. in *International Airport Authority case*⁵ that “arbitrariness was the antithesis of Article 14” and commented that this would mean that all governmental actions which are not supportable by law were *per se* violative of Article 14. I am afraid, it is rather late in the day to question the correctness of the landmark decision in *Maneka Gandhi case* and the innovative construction placed by Bhagwati, J. on Article 14 in the three cases of *Royappa*, *Maneka Gandhi* and *International Airport Authority* which have evolved new dimensions in judicial process.

74. As we read the above passage acknowledging the declaration of law that arbitrariness in State action is an antithesis of Article 14, we are also reminded of decisions of high authority of this Court that a violation of a principle of natural justice by a State action is a violation of Article 14 [see ***Union of India***

⁵⁸ (1986) 1 SCC 133

⁵⁹ (1974) 4 SCC 3

⁶⁰ (1978) 1 SCC 248

⁶¹ (1979) 3 SCC 489

v. Tulsiram Patel⁶²] and that natural justice is an antithesis of arbitrariness [see **Basudeo Tiwary v. Sido Kanho University**⁶³].

- 75.** Article 14's guarantee against arbitrariness is fundamental to all State actions. Since equality and natural justice are antithesis of arbitrariness, nowadays it has become customary to style a petition as one filed under Article 32 and vaguely allege either arbitrariness or violation of the traditional principles of natural justice [the rules that none should be condemned unheard and no one should be a judge of his own cause] as well as a third principle developed in India, which also includes the right to be afforded a fair hearing and a reasoned order should the outcome of the proceedings be adverse to the person proceeded against. Question is, should the Supreme Court entertain writ petitions under Article 32 without clear and specific pleadings as to how the right of equality or any other Fundamental Right has been infringed and what is the impact thereof on the suitor without clear, specific, and definite pleadings? The answer must be an emphatic 'NO'. If the principles deducible from the authorities referred to above are of any guidance and help, a loosely drafted writ petition under Article 32 ought not to be entertained in the absence of the requisite pleadings. Even where violation of a statutory right is sought to be camouflaged as violation of a Fundamental Right, or where a statutory right is found to have been predominantly violated with only an incidental infringement of a Fundamental Right, this Court may, in the judicious exercise of its discretion, refuse to entertain the writ petition while

⁶² (1985) 3 SCC 398

⁶³ (1998) 8 SCC 194

safeguarding the liberty of the suitor to pursue his writ remedy before the High Court under Article 226 of the Constitution.

- 76.** Having said that, we now proceed to decide the contentions raised by Reddy.
- 77.** The first contention is that the writ petition does not disclose violation of any Fundamental Right. In this regard, reference may be made to the first paragraph of the writ petition which reads:

This Writ Petition under Article 32 seeks to enforce Petitioner's fundamental Rights under Article 14, 19(1)(g) & Article 21 together with 300-A of the Constitution of India. This Writ Petition is necessitated on account of an extraordinary and brazen fraud upon this Hon'ble Court...

This appears to be a general statement regarding the particular Fundamental Rights which, according to Vishnu, stand breached. It is of no help to him. Furthermore, a perusal of paragraph 6(h) of the writ petition reveals averments to the effect that the rights of Vishnu under Articles 19(1)(g) and 21 have been severely impaired insofar as it relates to access to appropriate legal remedies, as the remedy available under Section 30 of the 1894 Act is only illusory in nature, considering that the question of title has already been declared in favour of Reddy.

- 78.** A plain reading of the writ petition together with the prayer clauses, noted in paragraph 6 (supra), makes it evident that none of Vishnu's Fundamental Rights were invaded to enable him maintain a writ petition under Article 32 of the Constitution. To recapitulate, Vishnu prayed in his writ petition that (i) Reddy be declared as not the sole owner of the subject land, (ii) NOIDA's decision (reflected in its letter dated 17th January, 2023) to sanction full compensation for acquisition of the land to Reddy be set aside, (iii) the trio be declared as co-owners of the land and jointly awarded compensation for

acquisition thereof and (iv) an inquiry be ordered to unearth the fraud and to initiate appropriate legal proceedings against the persons responsible. The case set up in the writ petition by Vishnu does not, in our opinion, constitute breach of any of his Fundamental Rights; although, it cannot be gainsaid that his property rights are definitely in jeopardy leading to violation of Article 300A of the Constitution for which a petition under Article 226 could have been entertained regard being had to the law laid down by a five-Judge Constitution Bench of this Court in ***Shivdev Singh v. State of Punjab***⁶⁴. However, Vishnu sought to project that the writ petition had to be filed due to concerns that even if a sound case on merits were presented, other courts would feel hesitant to entertain the grievance given this Court's decision in ***Reddy Veerana*** (supra). It was as if apart from the remedy of a writ petition before this Court, no other remedy was available to Vishnu.

79. That is, however, not the case before us. Vishnu has sought to avail the appellate remedy against the impugned order as well as a review of the decision in ***Reddy Veerana*** (supra) which, if undisturbed by us, would incidentally seal his fate. In any event, if Vishnu were to succeed in the civil appeal and the petition for review considered bearing in mind the decision on this civil appeal, the resulting relief would likely address his grievance arising from the fraud, of which he has claimed to be a victim.
80. In our view, there is no *prima facie* infringement of Vishnu's Fundamental Rights including, *inter alia*, the right to have access to an effective legal

⁶⁴ AIR 1963 SC 1909

remedy, since all the available options for relief are being sought to be explored by him. Accordingly, we uphold the first argument advanced by Reddy that the writ petition did not disclose violation of any of the Fundamental Rights and, hence, is not maintainable.

- 81.** Having regard to the aforesaid finding, we are not required to deal with the second ground; however, for completeness of decision, we are *ad idem* with the contention that a writ petition cannot lie against a judicial order. In this context, reference may be made to the nine-Judge Constitution Bench decision of this Court in ***Naresh Shridhar Mirajkar v. State of Maharashtra***⁶⁵ where it was pertinently observed as follows:

18. On these facts, the question which arises for our decision is whether a judicial order passed by the High Court prohibiting the publication in newspapers of evidence given by a witness pending the hearing of the suit, is amenable to be corrected by a writ of certiorari issued by this Court under Article 32(2). This question has two broad facets; does the impugned order violate the fundamental rights of the petitioners under Article 19(1)(a), (d) and (g); and if it does, is it amenable to the writ jurisdiction of this Court under Article 32(2)? Thus, in the present proceedings, we will limit our discussion and decision to the points which have a material bearing on the broad problem posed by the petitions before us.

* * *

37. The next question which calls for our decision is : does the impugned order contravene the fundamental rights of the petitioners under Article 19(1)? In dealing with this question, it is essential to bear in mind the object with which the impugned order has been passed. As we have already indicated, the impugned order has been passed, because the learned Judge was satisfied that the interests of justice required that Mr Goda should not be exposed to the risk of excessive publicity of the evidence that he would give in court. This order was passed by the learned Judge after hearing arguments from both the parties to the suit. Thus, there is no doubt that the learned Judge was satisfied that in order to be able to do justice between the parties before him, it was essential to grant Mr Goda's request for prohibiting the publication of his testimony in the newspapers from day to day. The question is : can it be said that an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental rights of the petitioners under Article 19(1)?

⁶⁵ AIR 1967 SC 1

38. The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1).

(emphasis ours)

- 82.** Interestingly, a perusal of the prayer clauses of the writ petition presented by Vishnu does not show that a challenge has been laid to any judicial order. He has prayed for a writ in the nature of certiorari, to quash and set aside the decision of NOIDA dated 17th January, 2023 and a writ of declaration to declare Reddy to not have an exclusive right to claim compensation. There being evidently no challenge to any judicial order, this ground of challenge is liable to be rejected.

B. MAINTAINABILITY OF CIVIL APPEAL/JURISDICTION OF THE SUPREME COURT

- 83.** A variety of objections regarding the jurisdiction of this Court in determining the questions arising for decision have been raised.

INTRA-COURT APPEAL

- 84.** Firstly, we wish to clarify that we do not possess and are not exercising any “intra-court appeal” jurisdiction, as contended by learned senior counsel representing Reddy. The Constitution does not confer any such jurisdiction on us and we are conscious of the legal position. However, having so clarified, it

is important to note that the principle of “fraud unravels everything” is not confined only to examining judgments rendered by the courts below but could include the unravelling of judgments of this Court as well, if at all the justice of the case before us so demands. In the former moiety of this judgment, we have discussed that Reddy has with impunity indulged in playing fraud on the courts and, therefore, his challenge to the jurisdiction of this Court must fail.

85. In ***Inderjit Singh Grewal v. State of Punjab***⁶⁶, this Court held that:

17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. “Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law.” It is trite that “fraud and justice never dwell together” (*fraus et jus nunquam cohabitant*). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. “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.” An act of fraud on court is always viewed seriously. [Vide *Meghmala v. G. Narasimha Reddy* [(2010) 8 SCC 383, para 34.]

18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth* [(1996) 1 SCC 435] and *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.* [(1997) 3 SCC 443].

86. Moreover, as noted hereinabove, the decision in ***A.V. Papayya Sastry*** (supra) delineated that every Court, either superior or inferior – first or final – has jurisdiction in cases where a judgment of the court has been obtained by fraud to treat it as nullity.

87. Acceptance of the contention of Reddy would lead to a situation akin to a juridical *cul-de-sac*, where no option is available to Vishnu to assert his legal

⁶⁶ (2011) 12 SCC 588

rights. Adopting a hands-off approach weighed down by the fact of existence of a judicial order of this Court of competent jurisdiction and thereby keeping it untouched (despite proof of such judicial order having been procured by fraud), would be a travesty of justice. Much of what has been said by this Court on the aspect of fraud vitiating even the most solemn of proceedings, in that case, would seem to be dead letter. On the contrary, ends of justice demand that such order(s), as might have been procured based on established fraud, must not be retained on the record of Courts of Record.

- 88.** Another challenge to the maintainability of the civil appeal is on the ground that the reference of the case, by this Court using its “intra-court appeal” jurisdiction to the present bench of three judges violate the established principle of *stare decisis* as it refers not only a question of law but also questions of fact. While the High Court and any subsequent Bench of this Court would no doubt continue to exercise jurisdiction on the basis of the dicta in **A.V. Papayya Sastry** (supra), in reality, for the purposes of judicial propriety and abundant caution, this Court in a coordinate configuration deemed it inappropriate to examine whether the decision of this Court in **Reddy Veerana** (supra), in which it is contended that the impugned order has merged into, ought to be examined in greater depth for ascertaining whether it was obtained by fraud. Therefore, the only plausible option open to the Bench of coordinate strength was to refer the matter to a larger bench to decide whether fraud has been played on this Court and this is precisely what has been done in the present case by the order dated 21st November, 2023. The said order was open-ended in the sense that who should constitute the

larger bench was not specified. It was left open for the master of the roster to decide on constitution of the larger bench; and it could have included the available member(s) of the two-Judge Bench, which decided **Reddy Veerana** (supra). However, this Bench having been constituted by the Hon'ble the Chief Justice and Reddy having participated in the proceedings before us without raising any demur regarding coram, we see the contention as one raised in desperation. Even otherwise, to put it straight, we do not wish to spill much ink regarding this misconceived contention since by way of this judgment, we have kept our focus limited to the point of "fraud" and have exercised caution and circumspection in not making any determination regarding the merits pertaining to the dispute at hand. We, therefore, see no merit in the contention urged on behalf of Reddy that placement of the civil appeal and the writ petition before us is in violation of any law.

- 89.** Lastly, *ex abundanti cautela*, as pointed out above, this Court in **Reddy Veerana** (supra) made no determination on the title of Reddy and only made the decision with respect to the compensation on the basis of the circle rate. Therefore, this larger bench is not strictly sitting in "appeal" on any point of law/fact but is concerned only with whether this Court's judgment was procured through fraud.

MERGER

- 90.** Learned senior counsel for Reddy has also assiduously argued that the present civil appeal is not maintainable, as it effectively challenges an order of the Supreme Court, into which the impugned order has merged. It is contended that no appeal lies before the Supreme Court against its own order.

91. Since arguments *in extenso* were advanced on the aspect of non-applicability/applicability of the doctrine of merger, we need to notice what it means, how this Court has applied it or declined to apply it to the cases before it, and finally how relevant it is to the present exercise.
92. As per Black's Law Dictionary (10th Edition), 'merger' means "*the act or an instance of combining or uniting; Civil Procedure. the effect of a judgment for the plaintiff, which absorbs any claim that was the subject of the lawsuit into the judgment, so that the plaintiff's rights are confined to enforcing the judgment*".
93. A brief overview of English law on the doctrine of merger by judgment reveals that when an action prevails, the cause of action, along with all attendant rights emanating from it, merge into the judgment and thereby stand extinguished.
94. To trace the origin of the doctrine of merger in English law, we must journey back to the nineteenth century. Almost two centuries ago, the Court of Exchequer Chamber, in the case of **King v. Hoare**⁶⁷, articulated the following principles:

If there be a breach of contract, or wrong done, or any other cause of action by one against another, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit attained, so far as it can be at that stage; and it would be useless and vexatious to subject the defendant to another suit for the purpose of obtaining the same result. Hence the legal maxim, 'transit in rem judicatam'—the cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher.

⁶⁷ (1844) 13 Meeson and Welsby 494

95. Similarly, in ***Kendall v. Hamilton***⁶⁸, the House of Lords, endorsing the decision in ***Hoare*** (supra), stated thus:

The doctrine of merger is quite intelligible. Where a security of one kind or nature has been superseded by another of a higher kind or nature, it is reasonable to insist that the party seeking redress should rest only upon the latter. So when what was once a mere right of action has become a judgment of a court of record, the judgment is a bar to the original cause of action.

96. In ***Virgin Atlantic Airways Ltd v. Zodiac Seats UK Ltd***⁶⁹, the Supreme Court of the United Kingdom, summarised the doctrine of merger as follows:

17. [...] [Merger] treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action: see *King v Hoare* [...].

97. Perhaps one of the earliest Indian decisions exploring the doctrine of merger is that of the High Court of Bombay in ***Commissioner of Income-Tax v. Tejaji Farasram Kharawalla***⁷⁰ wherein a Division Bench held thus:

It is a well-established principle of law that when an appeal is provided from a decision of a Tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court and although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court.

98. A three-Judge Bench of this Court in ***Natvarlal Punjabhai v. Dadubhai Manubhai***⁷¹, laid down that the English doctrine of merger, while it might have

⁶⁸ (1879) 4 App. Cas. 504

⁶⁹ [2013] UKSC 46

⁷⁰ (1953) SCC OnLine Bom 28

⁷¹ (1953) 2 SCC 489

influenced certain judicial pronouncements in our country, it essentially has no relevance to a Hindu widow's estate.

99. In ***State of Madras v. Madurai Mills Co. Ltd.***⁷², another three-Judge Bench observed that the application of the doctrine of merger depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. It was observed thus:

5. [...] But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal on revision, there is a fusion of merger of two orders irrespective of the subject-matter of the appellate or revisional order and scope of the appeal or revision contemplated by the particular statute.

100. The question arising for decision before a Constitution Bench of five-Judges of this Court in ***Collector of Customs, Calcutta v. East India Commercial Co. Ltd. and others***⁷³ was whether the order of the original authority merged in the order of the Appellate Authority even where the Appellate Authority merely dismissed the appeal without any modification of the order of the original authority. Answering the question posed before it, the Bench observed thus:

4. [...] It is obvious that when an appeal is made, the Appellate Authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the Appellate Authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original

⁷² (1967) 1 SCR 732

⁷³ (1963) 2 SCR 563

authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.

(emphasis ours)

101. At the turn of this century, the decision in ***Kunhayammed v. State of Kerala***⁷⁴ was rendered by a three-Judge Bench of this Court. Since this decision stands out as a guiding light wherein this Court summarized the law on the doctrine of merger and appears to be the sheet anchor of the claim of Reddy, it would be apt to examine the decision closely.

102. The question that arose for decision in ***Kunhayammed*** (supra) was whether upon dismissal of a special leave petition under Article 136 of the Constitution of India carried from an order of the High Court, a review petition would still be maintainable before such Court. The decision begins with the following words:

1. A question of frequent recurrence and of some significance involving the legal implications and the impact of an order rejecting a petition seeking grant of special leave to appeal under Article 136 of the Constitution of India has arisen for decision in this appeal.

The coordinate Bench had the occasion to examine the doctrine of merger in great depth. Briefly, what was held is this. If special leave were not granted (either by an unreasoned or a reasoned order) and the petition dismissed, the order under challenge would not merge in the order of dismissal. However, if upon grant of leave the Court dismissed an appeal in exercise of its appellate

⁷⁴ (2000) 6 SCC 359

jurisdiction, notwithstanding that the order is unreasoned, the doctrine would apply resulting in merger of the order under challenge in the order dismissing the appeal. In paragraph 7 the Court noted that the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized and that it is a common law doctrine founded on principles of propriety in the hierarchy of the justice delivery system. Paragraph 12 of the decision has aptly captured the logic underlying the doctrine of merger. It was observed thus:

12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

(emphasis ours)

The Bench then proceeded to sum up its conclusions thus:

42. 'To merge' means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68.)

* * *

44. To sum up, our conclusions are:

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

(iii) The 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 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.

(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 the 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 CPC.

(emphasis ours)

103. A subsequent three-Judge Bench in ***Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal***⁷⁵

succinctly summarized what was held in ***Kunhayammed*** (supra) in the following words:

20. The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:

(i) Dismissal at the stage of special leave petition—without reasons—no res judicata, no merger.

(ii) Dismissal of the special leave petition by speaking or reasoned order—no merger, but rule of discipline and Article 141 attracted.

(iii) Leave granted—dismissal without reasons—merger results.

104. It is discernible from the aforesaid decisions that although the doctrine of merger has its roots in common law principles, it has firmly been integrated within the contours of Indian jurisprudence.

105. Having discussed the law on the doctrine of merger, we must acknowledge that with rules come with exceptions. The doctrine of merger does not apply universally or without limit. There are certain decisions of this Court which, in the exceptional situations before it, declined to apply the doctrine of merger. It would be appropriate to notice the same now.

106. A two-Judge Bench of this Court in ***Commissioner of Sales Tax v. Vijai International Udyog***⁷⁶ emphasized that the doctrine of merger finds no application where the maxim "*actus curiae neminem gravabit*" is applicable. It was observed thus:

⁷⁵ (2019) 4 SCC 376

⁷⁶ (1984) 4 SCC 543

4. On the facts of the case, we do not accept the view of the High Court that the doctrine of merger applied. Both the assessee and the Commissioner had a statutory right of appeal to the Tribunal against the decision of the Assistant Commissioner and in exercise of that right two separate appeals had been filed. On account of the mistake of the Tribunal in not clubbing the two appeals the statutory right of appeal of one party could not be negated. It is a well-settled proposition of law that no party should suffer on account of the mistake of the Court or the Tribunal. That apart in a situation like this, the doctrine of merger has no application and the High Court was in error in throwing out the Commissioner's appeal by applying the doctrine of merger.

107. Yet again, the two-Judge Bench in **A.V. Papayya Sastry** (supra) laid down fraud as an exception to the doctrine of merger while observing thus:

38. The matter can be looked at from a different angle 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 plaintiff applicant 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.

39. 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.

(emphasis ours)

108. In **MRF Ltd. v. Manohar Parrikar**⁷⁷, a two-Judge Bench held that the doctrine of merger does not apply when the higher court has not adjudicated the issues on merits, and the controversy between the parties has not been looked into.

⁷⁷ (2010) 11 SCC 374

In applying this doctrine to the specifics of the case, the Court had the occasion to observe:

39. The issue of merger has no bearing in the facts and circumstances of the present petitions, since, the issue that was decided by the High Court in the earlier batch of writ petitions and the issue that was raised and considered in the subsequent public interest litigation is entirely different. Secondly, in our view, the principles of res judicata are also not attracted since the issue raised and considered in the subsequent public interest litigation had not been raised and considered in the earlier round of litigation.

109. The decision rendered by another Bench of two Judges of this Court in ***Commissioner of Central Excise, Delhi v. Pearl Drinks Ltd.***⁷⁸ is also worth consideration because it deals with a situation different from those considered by this Court in the aforementioned decisions. It was held thus:

21. The Tribunal obviously failed to notice this distinction and proceeded to apply the doctrine of merger rather mechanically. It failed to take into consideration a situation where an order may be partly in favour and partly against a party in which event the part that goes in favour of the party can be separately assailed by them in appeal filed before the appellate court or authority but dismissal on merits or otherwise of any such appeal against a part only of the order will not foreclose the right of the party who is aggrieved by the other part of this order. If the doctrine of merger were to be applied in a pedantic or wooden manner it would lead to anomalous results inasmuch as a party who has lost in part can by getting his appeal dismissed claim that the opposite party who may be aggrieved by another part of the very same order cannot assail its correctness no matter the appeal earlier disposed of by the court or authority had not examined the correctness of that part of the order.

110. The upshot of the aforesaid discussion is that when an appeal is limited to a specific part of the judgment and order of the first-instance court, the merger occurs only to that extent, leaving the rest intact and available for future consideration. The extent of merger is determined by the subject matter of the

⁷⁸ (2010) 11 SCC 153

appeal. The merger can only operate on issues which were the subject-matter of the appellate court's judgment and order and cannot have any application to issues which are not being taken on appeal by either party or which had not been touched upon by the appellate court.

- 111.** What happens in situations where an appeal is limited to a specific portion of the judgment of the first-instance court or where the issues decided by the court therein remain unaddressed in the appellate court's judgment: can it still be asserted that the entire original judgment of the first-instance court ceases to exist upon merging with the appellate court's judgment?
- 112.** In *S. Shanmugavel Nadar v. State of T.N.*⁷⁹, a Bench of two Judges laid down that it is only the operative part of an original judgment that merges in the judgment of the appellate forum and not the whole of the judgment. The relevant paragraph of the decision is extracted hereunder:

10. Firstly, the doctrine of merger. Though loosely an expression merger of judgment, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed, as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part i.e. the mandate or decree issued by the court which may have been expressed in a positive or negative form. For example, take a case where the subordinate forum passes an order and the same, having been dealt with by a superior forum, is confirmed for reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum; otherwise there would be an apparent contradiction. However, in certain cases, the reasons for decision can also be said to have merged in the order of the superior court if the superior court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum.

⁷⁹ (2002) 8 SCC 361

- 113.** It is clear that what gets merged is the operative part of the original judgment and order, not its entirety, unless the appellate court adopts, reiterates the reasoning, or expressly approves the reasoning contained in the first-instance court's judgment and order. Put differently, a 'declaration of law' by the appellate court regarding the issues before the first-instance court is necessary, which can only be inferred from a detailed, analytical order rather than a mere dismissal seeking closure of the case without clear discussion or analysis. Therefore, it becomes imperative to discern whether the appellate court's judgment and order indeed 'declares' the law on the issues presented before the first-instance court.
- 114.** At the cost of repetition, we may note that placing heavy reliance on **Kunhayammed** (supra) learned senior counsel for Reddy argued that the impugned order of the High Court having merged with the decision in **Reddy Veerana** (supra), the former ceases to exist, and it is the latter which subsists, remains operative, and is capable of enforcement in the eye of the law.
- 115.** Reverting to **Kunhayammed** (supra), we bear in mind what the coordinate Bench expressed in paragraphs 12 and 44(iii) extracted supra. While wholeheartedly concurring with the law laid down in **Kunhayammed** (supra), we also notice that **Kunhayammed** (supra), on its own terms, has recognized that the doctrine of merger has limited application; hence, the same decision does carve out an exception requiring every matter coming before the courts, where the point of merger is raised, to be decided on case-to-case basis.

116. There can be no doubt that a review petition before the court which passed the decree/order would be barred by reason of application of the doctrine of merger if despite dismissal of a civil appeal by this Court, be it by a reasoned or an unreasoned order, the appellant chooses to approach the court (whose decree/order was impugned) once again with a review petition. Notably, the issue that has engaged our attention in this appeal did not arise for decision in ***Kunhayammed*** (supra).

117. We preface our discussion on the next point by reiterating that a party to the proceedings affected by a judgment/order may appeal as of right within the prescribed period of limitation, if such a right is created by a statute. However, insofar as a stranger, i.e., a non-party to the proceedings is concerned, if an appeal from the judgment/order is allowed, he too can appeal provided a leave/permission is granted by the appellate court. Law is well-settled that much is not required to obtain leave/permission. If a stranger, dissatisfied with a judgment/order, can make out even a *prima facie* case that he, being bound by such judgment/order, is aggrieved by it or prejudicially affected by it, there could arise little reason for declining leave/permission. We may usefully refer to the decisions in ***Jatan Kumar Golcha v. Golcha Properties (P) Ltd.***⁸⁰ and ***State of Punjab v. Amar Singh***⁸¹ in this behalf. Precisely for this reason, the two-Judge Bench (cor. Surya Kant and Dipankar Datta, JJ.) granted permission to Vishnu to appeal against the impugned order.

⁸⁰ (1970) 3 SCC 573

⁸¹ (1974) 2 SCC 70

- 118.** Without reading and understanding the ratio laid down in ***Kunhayammed*** (supra) in light of the issue that was decided by it and blindly placing reliance on such ratio, as if it were a one-size-fits-all situations, could produce a result which may not be what the interest of justice of a given case would demand. A couple of situations can be conceived of where the principle of merger, as enunciated and in the manner understood as well as applied, could bring about undesirable and pernicious results.
- 119.** One of the situations, akin to the present case, could be where the judgment and order of a high court upon a challenge being laid before this Court is upheld in the course of disposal of a civil appeal by way of its dismissal. As a result of merger of the operative directions contained in the order of the high court in the appellate order of this Court, it is such appellate order which would partake the character of the only operative order. Now, if the order of the high court prejudicially affects a third party or even has the effect of binding such party but such party was deliberately not included in the array of respondents and, in fact, it is proved that he was unaware of the proceedings before the high court or this Court, the remedy of such affected party to appeal against the order of the high court with the permission of this Court as and when he derives knowledge of the same would not be available if the contention sought to be raised on behalf of Reddy, based on the merger doctrine, is accepted. The affected party would, thus, be disabled from applying for a review before the High Court per ***Kunhayammed*** (supra), its order having merged in this Court's order. No doubt, remedy by way of review followed by a curative petition is made available before this Court by the SC Rules, 2013 but the

same are not as wide as the remedy of appeal. Even in cases of such remedies, the party approaching this Court cannot urge, as a matter of right, that he be heard before an order is passed. The contention that Reddy has urged based on the merger doctrine, if accepted, might lead to highly unjust and inequitable consequences which, in cases, could be irreversible.

- 120.** Let us consider another situation. This Court by enactments made by the Parliament exercises appellate jurisdiction over orders passed by several Tribunals. Suppose, one respondent in an original proceeding before a Tribunal considers itself aggrieved by an order passed by it and carries it in an appeal before this Court, which is dismissed by a Bench of two Judges in exercise of appellate jurisdiction *vide* a reasoned order without notice to the respondents on the first day it is listed. However, while such appeal was pending before this Court, another respondent in the original proceeding before the Tribunal is also desirous of carrying the same order in appeal but, for sufficient cause, is unable to appeal readily. By the time such respondent upon completion of all formalities presents its appeal and the same comes up for consideration before a Bench of this Court, whatever be the strength of the Bench, the respondent in the appeal being the successful applicant before the Tribunal and before this Court too brings to its notice that the appeal presented first in point of time has been listed and dismissed by a Bench of two Judges of this Court. Should the appellant (in the appeal, which was filed later) be told off at the gates on the sole ground that the order under appeal has ceased to be the operative order, having merged with the appellate order of this Court? If the situation unfolds to be such where the Bench of greater strength is inclined to admit the

appeal disagreeing with the view of the Bench of two Judges, can it be said that the said Bench would be disabled from exercising their appellate jurisdiction since, per the doctrine of merger, the order under appeal does not exist? The answers to the aforesaid questions, in our considered opinion, cannot but be in the negative. A right of hearing that accompanies every proceeding decided publicly, unless such hearing is barred, cannot be cast aside for no better reason than that of a merger having occurred.

- 121.** There is one other exception to the doctrine of merger. Nowadays, it is not a rarity to find that petitions involving similar, though not identical, issues are clubbed together and disposed of by a common judgment and order. If such a judgment and order is unsuccessfully challenged before a superior court by one of the petitioners to the proceedings, and such a challenge fails, the doctrine of merger may not apply when another set of petitioners challenges the same (common) judgement and order; if the second set of petitioners are able to demonstrate that the case run by them is not identical (though bearing resemblance) with the proceedings already decided, it would still be open for the superior court to entertain the challenge and rule in a manner different from the earlier proceedings.
- 122.** Thus, the application of the doctrine of merger, in every case, should be accompanied by an awareness of its limitations and should not be wielded to close avenues for addressing genuine concerns. Prioritizing justice and fairness should supersede an absolute insistence on finality. While the latter is commendable, the former is superior. These doctrines, even though are grounded in sound and justifiable public policy arguments, yet, do not limit the

powers of the courts in cases where larger public interest is at stake. They have been adapted to accommodate exceptions and qualifications, leaving room for acknowledging special circumstances, particularly in matters of public significance.

123. On a conspectus of the authorities, we are inclined to the view that the doctrine of merger may not have any application in all cases of cognate civil appeals being carried from the same order (obviously at the instance of a party different from the appellant who approached this Court first in point of time), if it is convincingly demonstrated that (i) his right of appeal should not be foreclosed because of the very rare or special circumstance(s) that is/are projected before the court; or (ii) his appeal raises an issue of seminal public importance, which was not available to be raised by the appellant who approached this Court in its appellate jurisdiction in the earlier round of litigation, and also that such issue in the greater public interest requires a resolution by this Court; or (iii) since an act of court ought to prejudice none, refusal to interfere by this Court would invariably result in offending the principle of *actus curiae neminem gravabit*; or (iv) the earlier appellate decision is vitiated because of fraud having been practiced on this Court by a party in whose favour the ruling had been made, as in this case; or (v) that public interest would be put to extreme jeopardy by reason of irretrievable consequences ensuing, if interference which is otherwise found to be warranted in law were declined solely based on the doctrine of merger.

124. Having noted that fraud is an exception to the doctrine of merger and considering that the impugned order of the High Court and the decision of this

Court in **Reddy Veerana** (supra) have been found by us to be vitiated by fraud, the argument by learned senior counsel for Reddy as regards the non-maintainability of the present proceedings based on the merger doctrine is of no significance.

PROCEDURE, IF AN IMPEDIMENT TO EXERCISE JURISDICTION

- 125.** Procedural law is a sentinel of non-arbitrariness; it not only provides a safeguard against the individual vagaries of a judge but also establishes a structured framework for litigants to approach the legal system for redressal of their issues. However, procedural law cannot foresee all situations that may arise. Procedure must facilitate justice, not detract from it. In special cases, the letter of procedural law must yield to the ends of justice. Courts are, of course, duty-bound to apply procedural law in its entirety, save where such application would result in manifest absurdity.
- 126.** The contention advanced by learned senior counsel for Reddy is that the procedure undertaken by the Registry and the Division Bench of this Court violates the SC Rules, 2013. We are in complete disagreement with such a proposition since the provisions of the SC Rules, 2013, highlighted by learned senior counsel for Reddy, are applicable in the course of normal action. Once fraud, on the face of the record, is proved, the procedural law laid down by the SC Rules, 2013 must support the actualisation of justice, not the continued perpetuation of wrongs. We quite agree with the contention of learned senior counsel for Vishnu that Order LV, Rule 6 of the SC Rules, 2013 specifically recognises the inherent powers of this Court in the exercise of jurisdiction to secure justice. When the Court has been the victim of fraud, it's hands cannot

be tied down by procedural laws in a manner to defeat the interests and rights of other parties.

- 127.** In the case of ***State of Punjab v. Shamlal Murari***⁸², this Court with reference to Rule 3 of the Punjab and Haryana High Court Rules and Orders, Vol. 5, Chap. 1-A held:

8. ...This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time... .

- 128.** In ***M.V. "Vali Pero" v. Fernando Lopez***⁸³, this Court in a case regarding Rule 4 of Chapter XXII of the Calcutta High Court Rules, 1914, as applicable to the Original Side, held that:

18. Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system.

⁸² (1976) 1 SCC 719

⁸³ (1989) 4 SCC 671

- 129.** We have no hesitation to hold that a similar interpretation can be applied to the SC Rules, 2013.
- 130.** The contention of Reddy under consideration can also be dealt with by applying the maxim *actus curiae neminem gravabit*. No act of Court should harm a party being the foremost principle in the mind of any Court, it would be a travesty of justice if such court, feeling bound by the shackles of technicalities, were to decline interference to set things right despite arriving at a definitive conclusion of being tricked by fraud; and, it is a fallacy to urge such a contention before the Supreme Court, which has vast and pervasive powers to remedy any wrong that might have occasioned to a litigant owing to sharp and fraudulent practices of another litigant, more particularly in a case of proven fraud.
- 131.** This contention of Reddy, therefore, must fail owing to our satisfaction of the impugned order and the decision in ***Reddy Veerana*** (supra) having been vitiated by fraud.

C. VISHNU PURSUING THE CIVIL APPEAL AS WELL AS THE REVIEW PETITION AND APPLICATION FOR MODIFICATION/RECALL, SIMULTANEOUSLY

- 132.** That Vishnu has spared no effort to explore every option has been noticed by us above.
- 133.** An appeal against a decree or order, passed or made by an inferior court, before a superior court and a review of the same decree/order before the court which passed/made it cannot simultaneously be pursued by the same party. The logic behind it is that there cannot be a parallel challenge to the same decree or order by the same party before two different fora – that is, in the

courts of appellate jurisdiction and original jurisdiction. On the very terms of Section 114 read with Order XLVII Rule 1, CPC, such a course of action is not permissible.

134. However, there is an absence of a two-pronged assail in two different proceedings by Vishnu to the same decree or order: whereas the civil appeal is directed against the impugned order, a petition has subsequently been filed by Vishnu for review of the decision in **Reddy Veerana** (supra) [which had the occasion to modify the impugned order]. Therefore, neither Section 114 nor Order XLVII Rule 1, CPC would create a legal bar for entertaining the two proceedings [appeal and review] that have been initiated by Vishnu.

135. Nevertheless, it does seem to us to be a well thought out endeavour on the part of Vishnu to file the petition for review even after he had carried the impugned order in an independent appeal before this Court. Uncertainty was looming large and Vishnu, not content to rest on his oars by simply appealing to the conscience of this Court, also sought a review to remedy the wrong caused to him by Reddy. If indeed the appeal against the impugned order were to fail on the ground that the same had merged in the decision in **Reddy Veerana** (supra), as argued by Reddy, or even if the same appeal were to succeed and the impugned order set aside, Vishnu would have very little to salvage since the decision in **Reddy Veerana** (supra) would still hold the field. Filing of the review by Vishnu, thus, appears to have been intended to ensure that he is either not non-suited or that even after achieving success in appeal, he is not left in the lurch. However, we are of the considered opinion that even if Vishnu had not applied for a review - as a logical corollary of the aforesaid

discussions - the decision in **Reddy Veerana** (supra) too having been obtained by Reddy by playing fraud, has to be erased from the records being a nullity.

- 136.** Turning to the order under appeal declining registration of the petition for review, which has been directed to be tagged with these proceedings and also requires simultaneous disposal, we find that the petition was marked as defective. The grounds based whereon the Registrar declined registration have been perused.
- 137.** The occasion has now arisen for considering the grounds urged in support of the appeal against the Registrar's order. Apart from an objection that appropriate quantum of court fees has not been deposited, which Vishnu has disputed, the Registrar noted certain technical defects concerning array of parties and the like. The same are certainly curable defects. We, therefore, find it necessary to allow the appeal by requiring the Registry to notify the additional quantum of court fees payable by Vishnu, which has not been notified to him, as well as grant liberty to Vishnu to cure the other technical defects within a fortnight from this date. It is only upon curing of such defects that the petition for review shall be treated to be in order.
- 138.** As already discussed above, due to fraud having been played by Reddy, the doctrine of merger does not apply and, thus, the impugned order is open to interference notwithstanding the decision of this Court in **Reddy Veerana** (supra). For reasons already discussed, the civil appeal has to be allowed and the impugned order set aside.

- 139.** As a logical corollary of the impugned order being set aside, it would follow that the decision of this Court in **Reddy Veerana** (supra), upholding the same, which too was obtained by playing fraud, will also be a nullity, and thus stand recalled in exercise of our inherent powers.
- 140.** Furthermore, based on the aforesaid discussion, we are also inclined to allow the application (MA 1737/2023 in MA 255/2023 in C.A. No. 3636/2022) for recall of the order dated 30th January, 2023 whereby this Court directed Vishnu to approach the court under Section 30 of the 1894 Act for appropriate relief.

D. FORUM SHOPPING

- 141.** The contention that Vishnu has engaged in forum shopping is premised on the fact that he instituted Civil Suit No. 471/2020 on 7th August, 2020 before the trial court claiming that the compromise decree dated 17th November, 2006 was null and void and, therefore, it is contended that the present proceedings are instituted to bypass the jurisdiction of the trial court.
- 142.** This contention has been urged to be rejected. When the High Court has already ruled in a proceeding that directly affects Vishnu's right and when such decision, on appeal, is replaced by the decision of the higher court in **Reddy Veerana** (supra), Vishnu invariably was left with no other option but to approach this Court by way of these proceedings. After the decision in **Reddy Veerana** (supra), it is obvious that no court, far less the trial court, would venture to make any order having the effect of upsetting what this Court had directed rendering Vishnu's endeavour to approach any other court useless before first attempting to have the order operating against him in **Reddy Veerana** (supra) vacated/recalled.

143. Pertinently, we wish to point out that considering the long-standing set of disputes between the trio, it would have been appropriate if the High Court were urged to implead those third parties whose rights could specifically be affected. However, the High Court proceeded unaware of the fact that there was one other party (read Vishnu) who was claiming joint ownership and had even instituted a suit to have the decree obtained by Reddy declared void. Now, in view of the order that we propose to pass, we hope and trust that all the necessary parties would be brought on record and extended the opportunity to place their respective versions to facilitate an appropriate decision to be rendered to terminate the present *lis* by a just and proper redetermination of the compensation payable to the rightful claimant(s).

CONCLUSION

144. In the wake of the unbecoming conduct of the trio, we do not feel bound by the nature of relief claimed by Vishnu. We, therefore, consider it appropriate to order/direct as under:

- i. the impugned order of the High Court dated 28th October, 2021 passed in WP (Civil) 2272/2019 [Reddy Veeranna v. State of Uttar Pradesh & ors.] stands set aside, since fraud has vitiated the entire proceedings;
- ii. as a corollary to the above, the judgment and order dated 5th May, 2022 in **Reddy Veerana** (supra) (which too was obtained by playing fraud) is declared to be a nullity and stands recalled in exercise of our inherent powers;

- iii. the order dated 30th January, 2023 passed by this Court in MA 255/2023 in C.A. No. 3636/2022 is recalled, also in exercise of our inherent powers;
- iv. WP (Civil) 2272/2019 [Reddy Veeranna v. State of Uttar Pradesh & ors.] is remanded in its entirety to the High Court;
- v. as a consequence of (iv) supra, WP (Civil) 2272/2019 will stand revived and restored on the file of the High Court with direction to implead Vishnu Vardhan and T. Sudhakar as additional respondents;
- vi. WP (Civil) 2272/2019 will be decided afresh by the High Court in accordance with law, upon hearing all interested parties;
- vii. should any disputed question of fact arise for decision disabling it to decide the same based on affidavit evidence, the High Court may in its discretion permit the parties to lead oral and documentary evidence regarding the claim for compensation as well as re-determination and apportionment thereof amongst the rightful claimants, as if it were exercising powers under Section 54 of the 1894 Act.
- viii. till such time a decision is given by the High Court, the interim order dated 21st January 2025, whereby we allowed Reddy to furnish securities through his partnership firm Manyata-Pristine instead of cash deposit, shall continue meaning thereby that the securities furnished by him in the form of title deeds of immovable properties shall remain deposited with this Court and shall be subject to and abide by further orders of the High Court;
- ix. however, the interim order dated 3rd October, 2024 restraining Reddy from entering into any agreement to sell and/or to create third party rights in respect of the immovable assets owned by him (except those for which

security has been furnished), his family and the companies created by him or his family members shall remain in abeyance subject to his cooperating with the High Court for early disposal of the writ petition;

- x. in the event of non-cooperation from the side of Reddy, the High Court may pass such restraining order as it may deem fit and proper.
- xi. having regard to the magnitude of fraud which we have detected in course of consideration of these proceedings, we find it just and proper to request the Chief Justice of the High Court to preside over the Division Bench for finally deciding the writ petition as early as possible, and subject to the convenience of the Bench, preferably by the year end;
- xii. all questions on merits, other than those decided *vide* this judgment, including re-determination of fair and just compensation for the acquired land and apportionment thereof, are kept open for being urged before the High Court;
- xiii. having regard to the track record of the trio, the possibility of a compromise cannot be totally ruled out and if they file terms of settlement, we hope and trust that the High Court will carefully examine such terms to ensure that public interest is not hindered in its acceptance; and
- xiv. pending suits/proceedings, if any before any judicial fora / administrative authority, shall be taken to its logical conclusion in accordance with law.

145. The civil appeal (CA 7777 of 2023), the appeal against the order of the Registrar (MA Diary No. 6013/2024 in Review Petition Diary No. 33040/ 2023), and the application for recall of the order dated 30th January, 2023 (MA 1737/2023 in MA 255/2023 in C.A. No. 3636/2022) are allowed and shall

stand disposed of on the above terms together with all other connected applications. The writ petition [WP (C) 673 of 2023] is, however, dismissed.

- 146.** As indicated in paragraph 137, Vishnu shall be at liberty to cure the defects upon due communication of the additional court fees to be put in by him for making the petition for review in order. Thereafter, the petition for review (Dy. No. 33040/2023) shall be registered, appropriately numbered, and shown to have been disposed of by this order. Should Vishnu fail to cure the defects, the petition shall stand dismissed as infructuous.
- 147.** SMC (C) No. 3/2024 will be heard separately.
- 148.** In view of the remand ordered by us, we observe that the parties shall bear their own costs.

.....J
(SURYA KANT)

.....J
(DIPANKAR DATTA)

.....J
(UJJAL BHUYAN)

**NEW DELHI;
JULY 23, 2025.**

(1994) 1 Supreme Court Cases 1 : 1993 SCC OnLine SC 318

(BEFORE KULDIP SINGH AND P.B. SAWANT, JJ.)

S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. . .

Appellant;

Versus

JAGANNATH (DEAD) BY LRS. AND OTHERS . .

Respondents.

Civil Appeal No. 994 of 1972⁺, decided on October 27, 1993

Civil Procedure Code, 1908 — Ss. 33, 13 and Or. 6 R. 4 — Judgment or decree obtained by fraud — To be treated as nullity and can be questioned even in collateral proceedings — ‘Fraud’ — Meaning of — Non-disclosure of relevant and material documents with a view to obtain advantage amounts to fraud — Partition suit filed by respondent without disclosing deed of release executed by him relinquishing his rights in the property and preliminary decree obtained — At the time of hearing of application for final decree filed by respondent, appellants-defendants coming to know about want of locus standi of the respondent and as such challenging the application on ground of fraud — Held, decree obtained by non-disclosure of the release deed amounted to fraud on court and hence decree liable to be set aside — Penal Code, 1860, S. 25 — Contract Act, 1872, S. 17 — Words and phrases — ‘Fraud’ — Constitution of India, Art. 136 — Fraud on court

The respondent was working as a clerk with one C, who had obtained a decree against the appellants. In execution of the decree the respondent purchased at court sale the properties belonging to the appellants on behalf of C. Later, by a registered deed the respondent relinquished all his rights in the property in favour of C. Meanwhile the appellants judgment-debtors paid the total decretal amount to C. All the same the respondent without disclosing his execution of the release deed in favour of C, filed a suit for partition of the property and obtained a preliminary decree. Thereafter he filed an application for a final decree. It was only at the hearing of this application that the appellants came to know about the release deed and want of locus standi of the respondent. They therefore, challenged the application on the ground that non-disclosure of the vital document by the respondent vitiated the proceedings and as such the preliminary decree was obtained by playing fraud on court and was a nullity. The trial court accepted the



contention and dismissed the application for final decree. The High Court, however,

inter alia taking the view that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence" set aside the order of the trial court. Allowing the appeal

Held :

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. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. 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. A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

(Paras 5 and 1)

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. 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 be guilty of playing fraud on the court as well as on the opposite party.

(Para 6)

In this case the respondent, on his own volition, executed the registered release deed in favour of C. He knew that the appellants had paid the total decretal amount to his master C. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of C. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. Therefore, the judgment of the High Court is set aside and that of the trial court is restored. The appellants shall be entitled to costs quantified at Rs 11,000.

(Para 6)

R-M/12514/C

Advocates who appeared in this case:

Ms Lily Thomas, Advocate, for the Appellants;

A.T.M. Sampath and Ms Pushpa Rangam, Advocates, for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J.— "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in

the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint-properties and for mesne profits. The appellants-defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the



Page: 3

application for grant of final decree. The respondents-plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case-law and finally allowed the appeal and set aside the order of the trial court. This appeal is by way of certificate granted by the High Court.

3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non-disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the

preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B-15) before the trial court. The relevant part of the release deed is as under:

"Out of your accretions and out of trust vested in me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment and the said properties should henceforth be held and enjoyed with all rights by you as had been done:

So far if any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you."

4. The High Court reversed the findings of the trial court on the following reasonings:

"Let us assume for the purpose of argument that this document, Ex. B-15, was of the latter category and the plaintiff, the benamidar, had



completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Ex. B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support

of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Ex. B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

The High Court further held as under:

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim '*interest reipublicae ut sit finis litium*' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation."

Finally, the High Court held as under:

"The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when



he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex. B-15. Even so, that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property."

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree

with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". 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. 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.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. 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 be guilty of playing fraud on the court as well as on the opposite party.



7. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs 11,000.

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† From the Judgment and Order dated April 18, 1967 of the Madras High Court in Appeal No. 347 of 1962

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(2008) 12 Supreme Court Cases 481 : 2008 SCC OnLine SC 1025

(BEFORE C.K. THAKKER AND D.K. JAIN, JJ.)

K.D. SHARMA . . Appellant;

Versus

STEEL AUTHORITY OF INDIA LIMITED AND
OTHERS . . Respondents.

Civil Appeal No. 4270 of 2008⁺, decided on July 9, 2008

A. Constitution of India — Arts. 226, 32 and 136 — Maintainability of writ petition — Abuse of process of court/law/fraud on court — Power and duty of writ court where petitioner makes false statement or conceals material facts or misleads the court — Held, in such a case the court may dismiss the petition at the threshold without considering the merits of the claim — Court would be failing in its duty if it does not reject the petition on the said ground — Petitioner in such a case is also required to be dealt with for contempt of court for abusing the process of the court — In the present case, the appellant did not approach the court with clean hands by disclosing all facts — True facts were just contrary to what was sought to be placed before the Court — Hence on this ground alone the appellant cannot claim equitable relief — Appeal is dismissed with costs — Constitution of India — Arts. 226, 32 and 136 — Pleadings — Contempt of Courts Act, 1971 — S. 2 (c) — Civil Procedure Code, 1908 — Or. 6 Rr. 1 and 2, Or. 7 R. 1, Or. 8 R. 6-A and S. 35

B. Constitution of India — Arts. 226 and 32 — Writ jurisdiction of High Court and Supreme Court — Nature and purpose of, reiterated

Respondent 1, Steel Authority of India Ltd. i.e. SAIL issued tenders for certain work. The tender was required to be submitted in two parts : (i) Techno-commercial parameters (Part I), and (ii) Price bid (Part II). For opening of price bid (Part II), existence of minimum three techno-commercially qualified offers was necessary. The tender process had to be cancelled four times due to lack of bidders qualifying the first part. Fifth time the appellant was found eligible and qualified. Since his bid was the lowest, it was accepted and the work was entrusted to him. Respondent 2 challenged the said decision by filing a writ petition, which was dismissed. Thereafter, Respondent 2 filed a review petition, which was allowed and SAIL was directed to open the fourth tender and consider the case of the appellant and Respondent 2 afresh in accordance with law. Against the said order, special leave petitions were filed before the Supreme Court by the appellant and SAIL. But the said petitions were dismissed.

Thereafter, in accordance with the order passed by the High Court in the review petition, the fourth tender was considered and notices were issued to Respondent 2

as also to the appellant. The appellant was represented through his power of attorney i.e. *R*. A decision was taken to entrust the contract to Respondent 2. Meanwhile, several applications were filed before the High Court seeking implementation, clarification and/or modification/alteration of the order passed in the review petition. All the said applications were disposed of together



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by an order passed in view of a compromise and settlement arrived at between the parties concerned.

Subsequently, the appellant filed an application for recall of the said order of the High Court alleging inter alia that fraud had been perpetrated by the opposite party on him as well as on the court. The said application was rejected. Hence, the present appeal.

The appellant contended that *R* who was earlier his representative and in whose favour he had issued a power of attorney had joined hands with Respondent 2 and was virtually won over by him. The appellant stated that he had revoked and withdrawn the power of attorney issued in favour of *R*. Therefore, *R* had no authority to represent him and appear before SAIL for negotiations for him or enter into any compromise or settlement on his behalf. The appellant also alleged that at the time of hearing of miscellaneous cases, a new advocate appeared on his behalf who was not engaged by him. He stated that some blank papers on which he might have signed earlier came to be utilised for the purpose of making applications for settlement showing that he was agreeable to such settlement. Thus, the appellant submitted that in these circumstances, the order passed by the High Court deserved to be quashed and set aside by remitting the matter to the High Court so that the recall application filed by him be decided afresh after hearing the parties.

On the other hand, SAIL submitted that bald allegations had been levelled against it without there being any material whatsoever in support thereof. SAIL submitted that no communication was sent at any point of time by the appellant to SAIL that though earlier he had issued the power of attorney in favour of *R*, it was subsequently withdrawn or revoked and that *R* would not represent the appellant in future before SAIL. On the contrary, though notice was issued by SAIL and received by the appellant, the appellant did not remain present and sent a communication to SAIL that *R* would represent him. SAIL also submitted that the appeal filed by the appellant was liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him.

Dismissing the appeal with costs, the Supreme Court

Held :

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. Prerogative writs mentioned therein are issued for doing substantial justice. It is,

therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, 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.

(Para 34)

A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses any material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

(Para 36)



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As per settled law, the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of the writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts". An applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

(Paras 38 and 39)

State of Haryana v. Karnal Distillery Co. Ltd., (1977) 2 SCC 431; *Vijay Kumar Kathuria v. State of Haryana*, (1983) 3 SCC 333; *Welcom Hotel v. State of A.P.*, (1983) 4 SCC 575 : 1983 SCC (Cri) 872; *Agricultural & Processed Food Products v. Oswal Agro Furane*, (1996) 4 SCC 297; *State of Punjab v. Sarav Preet*, (2002) 9 SCC 601 : 2002 SCC (L&S) 1085; *Union of India v. Muneesh Suneja*, (2001) 3 SCC 92 : 2001 SCC (Cri) 433; *All India State Bank Officers Federation v. Union of India*, 1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454; *Vijay Syal v. State of Punjab*, (2003) 9 SCC 401 : 2003 SCC (L&S) 1112, *relied on*

R. v. Kensington Income Tax Commrs., (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA), *approved*

The appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by the Supreme Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorised *R* to appear on his behalf. *R* duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder.

(Paras 33 and 32)

Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly. He has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of the State (SAIL) has not followed the doctrine of natural justice and the fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But the merits of the case have also been considered and



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even on merits, no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

(Para 33, 52 and 53)

C. Fraud — Fraud on court — Effect of — Reiterated, fraud would vitiate all judicial acts, whether in rem or in personam — In review petition filed by Respondent 2 after dismissal of his writ petition, High Court directing the Company concerned i.e. SAIL to reconsider the tender in question taking into account the cases of Respondent 2 and appellant — On dismissal of SLPs filed against the said order. SAIL deciding to grant contract for work to

Respondent 2 after opening the tender in the presence of Respondent 2 and R, who was representative of appellant and was holding his power of attorney – While deciding applications seeking implementation, clarification and/or modification/alteration of the order passed in the review petition, High Court disposing of the matter in terms of a compromise and settlement arrived at between the parties concerned wherein appellant was represented through R – Appellant subsequently filing an application for recall of the said order of the High Court on the basis of allegation that a fraud had been played upon him and the court as R representing him before the High Court and SAIL was not authorised to appear and act on his behalf because the power of attorney issued in favour of R was withdrawn by the appellant since he had joined hands with Respondent 2 – Allegation also made that some blank papers on which the appellant might have signed earlier were utilised for the purpose of making applications for settlement showing that the appellant was agreeable to such settlement – Held, at no point of time, had the appellant made any grievance against R nor had he informed SAIL regarding the withdrawal of the said power of attorney – Hence, it could not be said that the appellant was deceived or cheated, either by SAIL or by anyone else – In the facts and circumstances of the case, the application filed for recall of the High Court's order on the ground of the alleged fraud was rightly dismissed – Civil Procedure Code, 1908 – S. 33 and Or. 20 – Contract Act, 1872 – S. 17 – Penal Code, 1860 – S. 25 – Evidence Act, 1872 – S. 44 – Words and Phrases – “Fraud”

Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the 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.

(Para 27)

S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1; *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221, *followed*

In the present case, pursuant to the order passed by the High Court in review and after dismissal of special leave petitions by the Supreme Court, SAIL issued notices to the parties including the present appellant. Respondent 2 remained present for negotiation. The appellant received the notice but intimated SAIL that R would remain present on his behalf. At no point of time, had the appellant made any grievance against R nor had he informed SAIL that he had withdrawn the power of attorney issued earlier in favour of R. It, therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else.

(Para 29)

W-M/38705/S



Advocates who appeared in this case :

Mahendra Anand, Senior Advocate (Kamal Behari Panda, Neeraj Kr. Jain, Sanjay Singh, Sandeep Chaturvedi and Ugra Shankar Prasad, Advocates) for the Appellant;

Jagdeep Dhankar, Senior Advocate (Sunil Kr. Jain, Advocate) for Respondents 1, 3 and 4;

Kailash Vasdev, Senior Advocate (Ms Kumud Lata Das, Advocate) for Respondent 2;

Santosh Mishra and Ms Sharmila Upadhyay, Advocates, for the Intervening Party.

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493h

11. (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136
(CA), *R. v. Kensington Income Tax Commrs.*

492d, 492g-h, 493e-f

The Judgment of the Court was delivered by

C.K. THAKKER, J.— Leave granted.

2. The present appeal arises out of the judgment and order dated 16-2-2005 in Miscellaneous Cases Nos. 9 and 10 of 2005 and Miscellaneous Case No. 57 of 2004 in Review Petition No. 4 of 2002 passed by the High Court of Orissa.

3. Shortly stated, the facts of the case are that Respondent 1, Steel Authority of India Ltd. ("SAIL", for short) issued tenders for raising, transporting and loading of iron ore lumps and fines into railway wagons at Kalta Iron Mine. The tender was required to be submitted in two parts: (i) Techno-commercial parameters (Part I), and (ii) Price bid (Part II). Price bid of the tender was to be opened only after opening of the techno-commercial parameters and if the bidder was found qualified.

4. In response to the first notice dated 5-6-2000, 19 tender papers were sold. The authorities, however, received response only from 10 persons. Techno-commercial parameters (Part I) was opened and it was found that only one bidder, namely, M/s Ores India Pvt. Ltd. (Respondent 2 herein) was qualified. The process, therefore, had to be cancelled because for opening of price bid (Part II), minimum three techno-commercially qualified offers ought to have been there as per Clause 7.7 of the Purchase/Contract Procedure, 2000. Re-tender was, therefore, issued on 8-9-2000, but it was also required to be cancelled owing to "no perceptible improvement" in the situation. The tender was floated for the third time, which was unsuccessful.

5. The fourth notice inviting tenders was issued on 22-1-2001. It met with the same fate. Then the fifth time, tenders were invited on 7-5-2001 wherein the appellant was found eligible and qualified. His bid was the lowest. The said bid was accepted and the work was entrusted to him.

6. The decision taken by the first respondent (SAIL) came to be challenged by Respondent 2 in the High Court of Orissa by filing a writ petition being OJC No. 3508 of 2002. The main allegation of the petitioner before the High Court (Respondent 2 herein) was that the first respondent (SAIL) cancelled previous four notices inviting tenders only with a view to oblige the appellant and to entrust work to him who could not qualify himself earlier for want of requisite eligible criteria in tender process. Ultimately, the standard as prescribed earlier was relaxed and lowered down in the fifth tender notice. When the present appellant became eligible and qualified, the tenders were opened and his bid was illegally accepted by SAIL. The petition was heard on merits and the High Court vide its judgment and order dated 30-5-2002 dismissed the petition.

7. Respondent 2, however, came to know that he was eligible and yet his case was not considered. He, therefore, filed a review in the High Court which was registered as Review Petition No. 4 of 2002. By a judgment and order dated 3-2-2003, the Division Bench allowed the review petition and directed the authorities (SAIL) to open the fourth tender and consider the case of the petitioner (Respondent 2) and Respondent 3 (the appellant) afresh in accordance with law within a period of one month from the receipt of the writ. The above order was challenged by the appellant by filing special leave petition in this Court. Special leave petition was also filed by SAIL. Both the special leave petitions, however, were dismissed by this Court on 28-11-2003.

8. It is alleged by the appellant that after dismissal of special leave petitions by this Court, SAIL opened the tender in the presence of the second respondent only without intimating the appellant and in his absence. SAIL also negotiated the rates with the second respondent and decided to entrust the work to him. Meanwhile, several applications were filed before the High Court for clarification and/or modification/alteration of the order passed in the review petition. Miscellaneous Case No. 46 of 2004 was filed by Respondent 2 seeking implementation of the order of the High Court dated 3-2-2003. Miscellaneous Case No. 48 of 2004 was filed by SAIL for clarification while Miscellaneous Case No. 57 of 2004 was filed by the appellant to decide disqualification of Respondent 2. Miscellaneous Cases Nos. 9 and 10 of 2005 were also said to have been filed requesting the High Court to dispose of the matters in view of compromise and settlement arrived

at between the parties.

9. The High Court by the impugned order dated 16-2-2005, disposed of all the applications on the basis of the settlement said to have been arrived at between the parties which was duly recorded in the order wherein the present appellant was also a party-respondent. The appellant came to know that fraud



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had been committed by the respondents upon him as well as upon the Court. He, therefore, filed Miscellaneous Case No. 63 of 2005 on 28-6-2005 to recall the order dated 16-2-2005 alleging inter alia that fraud had been perpetrated by the opposite party on him as well as on the Hon'ble Court. A prayer was also made to investigate the matter by the Central Bureau of Investigation (CBI) or Vigilance Authorities.

10. Since nothing was done by the High Court, he again approached this Court by filing special leave petition which was registered as Special Leave Petition (Civil) No. ... of 2006 (CC No. 2486 of 2006). The said petition came up for hearing before this Court and was dismissed on 12-5-2006 as "not pressed at this stage". It was observed that if the petitioner would make a prayer before the High Court for expeditious disposal of the application to recall the order, the said prayer would be considered appropriately and application would be disposed of accordingly. It is the case of the applicant that even thereafter the recall application had not been placed before the Court and was not decided as directed by this Court. In the circumstances, the appellant approached this Court by filing a special leave petition on 6-9-2006.

11. On 9-10-2006, the matter was placed before this Court for admission hearing. Notice was issued to the respondents. When the matter was placed for further hearing on 8-3-2007, the following order was passed:

"Service is complete.

Though served, nobody appears on behalf of Respondent 2 (the original petitioner). With a view to give one more opportunity, list the matter after two weeks."

12. According to the appellant, it is only after the above order that the wheels moved very fast. The respondents made all attempts to get the matter on board before the High Court. The Court finally rejected the prayer of the appellant for recalling of the order and dismissed the application. According to the appellant, all those actions were illegal, contrary to law and deserve interference by this Court.

13. We have heard the learned counsel for the parties.

14. Learned counsel for the appellant contended that fraud has been played upon the Court as well as upon the appellant and all orders passed by the High Court deserve to be quashed and set aside only on that ground. According to the appellant, when the miscellaneous petitions were placed before the High Court, the Court was bound to decide them in accordance with law after hearing the parties. Instead, the High Court disposed of all the petitions on the basis of "so-called" settlement said to have been arrived at between the parties. So far as the appellant is concerned, he had never entered into any settlement or compromise.

15. Mr C.M. Ramesh, Chairman and Managing Director of Rithwik Projects who was earlier representative of the appellant and in whose favour the appellant had issued a power of attorney had joined hands with Respondent 2 and was virtually won over by him. The appellant had also



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revoked and withdrawn the power of attorney issued in favour of Ramesh and obviously, therefore, he had no authority to represent the appellant and could not have appeared either before SAIL for negotiations for him or entered into any compromise or settlement on behalf of the appellant.

16. It was also contended that though for a substantially long period, application for recalling of order instituted by the appellant had not come on board and he had to approach this Court making grievance about non-hearing of the matter, there was no progress whatsoever. It was only after the order passed by this Court and affording an opportunity to the respondent stating that if he would not appear, an appropriate order would be passed, that Respondent 2 got the matter hurriedly disposed of in the High Court.

17. It was also the allegation of the appellant that at the time of hearing of miscellaneous cases, a new advocate appeared on his behalf who was not engaged by the appellant. Some blank papers on which the appellant might have signed earlier came to be utilised for the purpose of making applications for settlement showing that the appellant was agreeable to such settlement; the settlement was produced before the Court and on that basis, the matter was finally disposed of on the assumption that all the parties had compromised and amicably settled the matter and nothing was required to be done. Accordingly all the three Miscellaneous Petitions Nos. 46, 48 and 57 of 2004 were disposed of. It was submitted that in these circumstances,

the order passed by the High Court deserves to be quashed and set aside by remitting the matter to the High Court so that the recall application filed by the appellant be decided afresh after hearing the parties.

18. The learned counsel for Respondent 1 SAIL strongly refuted the allegations levelled by the appellant. An affidavit-in-reply is filed denying all the averments and allegations against SAIL. It was stated that the order passed by the High Court in the review petition was challenged by SAIL, but the special leave petition was dismissed. Thereafter obviously, SAIL was required to act in accordance with the order passed by the High Court in the review petition and confirmed by this Court.

19. It was also submitted by learned counsel for SAIL that bald allegations have been levelled against SAIL by the appellant without there being any material whatsoever in support of such allegations. On the contrary, all throughout SAIL has acted strictly in consonance with law.

20. The counsel stated that in accordance with the order passed by the High Court in the review petition, the fourth tender was considered and notices were issued to Respondent 2 as also to the appellant herein. The appellant received the notice. He addressed a letter to SAIL stating therein that he would remain present in pursuance of the notice issued by SAIL through his power of attorney and representative Ramesh of Rithwik Projects. Accordingly, Rithwik Projects through its Chairman and Managing Director Ramesh appeared and a decision was taken to entrust the contract to Respondent 2. In the circumstances, it cannot be said that any fraud has been committed by SAIL either on the appellant or on the Court.



21. The counsel for SAIL further stated that the appellant has not been affected at all. It was stated that work entrusted to the appellant was under Tender Notice 5 and not under Tender Notice 4. Period of Tender Notice 5 was for three years. The said period of three years was over and the appellant had completed the said work. Thereafter there was no right in favour of the appellant nor could he insist continuance of the contract. The counsel, therefore, submitted that the appeal should be dismissed by this Court.

22. Even otherwise, according to the counsel, no communication was sent at any point of time by the appellant to SAIL that though earlier

he had issued power of attorney in favour of Ramesh of Rithwik Projects, it was subsequently withdrawn or revoked and that he would not represent the appellant in future before SAIL. On the contrary, though notice was issued by SAIL and received by the appellant, he did not remain present and sent a communication to SAIL that Ramesh of Rithwik Projects would represent him. It was, therefore, not open to the appellant thereafter to turn round and make wild allegations against SAIL nor is he entitled to any relief.

23. On behalf of Respondent 2, M/s Ores India Pvt. Ltd., the counsel contended that no case whatsoever has been made out by the appellant so as to interfere with the order passed by the High Court. According to the counsel, in fact SAIL had obliged the appellant which was clear from the facts and proved from the decision in the review petition by the High Court. When the fourth tender notice was cancelled, Respondent 2 instituted a writ petition challenging the said action of SAIL. Meanwhile, the fifth tender notice was issued and the bid of the present appellant was accepted by SAIL. The petition filed by Respondent 2 in relation to the fourth tender notice came to be dismissed. Subsequently, however, Respondent 2 came to know that though Respondent 2 was eligible and qualified, SAIL had obliged the present appellant by cancelling the process of the fourth tender notice considering other bidders ineligible and unqualified. He, hence, filed a review petition. In the review petition, the Court was convinced that the grievance voiced by Respondent 2 was correct and the action of SAIL was wholly illegal and improper. The review petition was, therefore, allowed and SAIL was directed to reconsider the tender notice by treating Respondent 2 as eligible and qualified. Even observations were made by the High Court against the conduct of officers of SAIL. The said order was challenged by SAIL as also by the appellant but this Court did not interfere. The fourth tender was thereafter considered. Notices were given to all bidders including the appellant. The bid of Respondent 2 was accepted and the work was entrusted to him. It is, therefore, submitted that the appellant has no reason or ground to make grievance against that action and the appeal filed by him is liable to be dismissed.

24. We have considered the rival contentions of the parties.

25. The learned counsel for the appellant alleged that fraud had been committed by the respondents on the appellant as well as on the Court. Only on that ground, the impugned action of SAIL granting contract in favour of

Respondent 2 deserves to be set aside. According to the counsel, Ramesh, Chairman and Managing Director of Rithwik Projects, in whose favour the appellant had issued power of attorney, had taken side of Respondent 2. The power of attorney was, therefore, later on withdrawn by the appellant and yet he was allowed to be represented for the appellant before SAIL as also before the High Court and the "so-called" compromise and settlement was arrived at. He was not authorised to do so against the interest of the appellant and on his representation, the High Court could not have disposed of the miscellaneous cases.

26. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in *S.P. Chengalvaraya Naidu v. Jagannath*¹ wherein quoting the above observations, this Court held that a judgment/decreed obtained by fraud has to be treated as a nullity by every court.

27. Reference was also made to a recent decision of this Court in *A.V. Papayya Sastry v. Govt. of A.P.*² Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)

"22. 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 the law. Such a judgment, decree or order—by the first court or by the final court—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."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the 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.

28. So far as the proposition of law is concerned, there can be no two opinions. The learned counsel for the respondents also did not dispute the principles laid down in the above decisions as also in several other judgments. They, however, stated that on the facts and in the circumstances of the case, the ratio laid down in the above cases has no application.

29. As already adverted to earlier, according to SAIL, pursuant to the order passed by the High Court in review and after dismissal of special leave petitions by this Court, it issued notices to the parties including the present appellant. Respondent 2 remained present for

negotiation. The appellant received the notice but intimated SAIL that Ramesh of Rithwik Projects would remain present on his behalf. At no point of time, had the appellant made any grievance against Ramesh nor had he informed SAIL that he had withdrawn the power of attorney issued earlier in favour of Ramesh. It,



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therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else.

30. The argument of the learned counsel for the appellant of violation of principles of natural justice and fair play also has no force. When notice was issued by SAIL to the appellant and he had informed SAIL by a written communication that Ramesh would remain present as his representative, it does not lie in the mouth of the appellant that SAIL had acted in breach of natural justice.

31. SAIL in its written submissions contended that the appeal filed by the appellant is liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him. An impression was sought to be created by the appellant, submitted the counsel, that the appellant could not complete the work given to him and it was assigned to Respondent 2. It is clear that after Tender Notice 4 was cancelled, albeit illegally as held by the High Court and by this Court, Tender Notice 5 was issued. The bid of the appellant was accepted and the contract was given to him. It was for 2002-2005 i.e. for three years. The appellant was allowed to complete the said period and the contract had not been terminated or abruptly discontinued during the said period. It was over in 2005 by efflux of time. What was done by SAIL was to implement the order of the High Court in connection with Tender Notice 4 which was not acted upon. In that process, parties were called for negotiations, offer of Respondent 2 was accepted and work was given to him. It is, therefore, not correct to say that the appellant had suffered. The appellant wanted to continue the work even though the period of Tender Notice 5 was over and he had taken the benefit thereunder. The appellant had no right or reason to make grievance so far as Tender Notice 4 was concerned. Hence, the appellant is not entitled to any relief.

32. We find considerable force in the argument of the learned counsel. From the record, it is clear that Tender Notice 4 was wrongly ignored and no process thereunder was undertaken by SAIL. What was granted to the appellant was a contract under Tender Notice 5. The appellant was working under Tender Notice 5. Meanwhile, the review of

Respondent 2 against Tender Notice 4 was allowed and after the order passed by this Court dismissing special leave petitions, SAIL implemented the said order, bid of Respondent 2 was accepted and the contract was given to him. To us, SAIL is right in urging that the appellant cannot insist that even under the contract under Tender Notice 5, he should be allowed to continue the work. We, therefore, see no substance in the argument of the learned counsel for the appellant and the contention is rejected.

33. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by this Court. The true facts, however, were just contrary to what



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was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorised Ramesh of Rithwik Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder had been given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

34. 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. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, 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.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs.*³ in the following words: (KB p. 514)

"... it has been for many years the rule of the court, and one which

it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.*³ Viscount Reading, C.J. observed: (KB pp. 495-96)

“... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the



affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further*

from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.*³ is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

40. Let us consider some important decisions on the point.

41. In *State of Haryana v. Karnal Distillery Co. Ltd.*⁴ almost an agreed order was passed by the Court that on expiry of the licence for manufacturing



of liquor on 6-9-1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-1977, and the Court granted stay of dispossession. In

appeal, the Supreme Court set aside the order granting stay of dispossession on the ground that the petitioner Company in filing the petition in the High Court had misled it and started the proceedings for oblique and ulterior motive.

42. In *Vijay Kumar Kathuria v. State of Haryana*⁵ it was the case of the petitioners that the provisional admissions granted to them were not cancelled and they were continuing their studies as postgraduate students in Medical College on the relevant date. On the basis of that statement, they obtained an order of status quo. The Supreme Court ordered inquiry and the District Judge was asked to submit his report whether the provisional admissions granted to the petitioners were continued till 1-10-1982 or were cancelled. The report revealed that to the knowledge of the petitioners their provisional admissions were cancelled long before 1-10-1982 and thus, the petitioners had made false representation to the Court and obtained a favourable order. Dismissing the petition, this Court observed: (SCC p. 334, para 1)

"1. ... But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the special leave petitions are liable to be dismissed."

43. Deprecating the reprehensible conduct of the petitioners as well as of their counsel, the Court stated: (*Vijay Kumar Kathuria case*⁵, SCC pp. 334-35, para 3)

"3. Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr. A.K. Kapoor who happens to be a medico-legal consultant practising in courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two petitioners and their counsel (who also gave evidence in support of the petitioner's case before the District Judge) have indulged in telling lies and making reckless allegations of fabrication and manipulation of records against the college authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their careers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the Bar Council for appropriate action but we refrained from doing so as the petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the court. *We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour....*"

(emphasis supplied)



44. In *Welcom Hotel v. State of A.P.*⁶ certain hoteliers filed a petition in this Court under Article 32 of the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained ex parte stay order. The price, however, was fixed as per the agreement between the petitioners and the Government but the said fact was suppressed. Describing the fact as material, the Court said: (SCC pp. 580-81, para 7)

“7. ... Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court.”

45. In *Agricultural & Processed Food Products v. Oswal Agro Furane*⁷ the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of “very important fact”, this Court set aside the order of the High Court.

46. In *State of Punjab v. Sarav Preet*⁸ A obtained relief from the High Court on her assertion that a test in a particular subject was not conducted by the State. In an appeal by the State, it was stated that not only the requisite test was conducted but the petitioner appeared in the said test and failed. Observing that the petitioner was under an obligation to disclose the said fact before the High Court, this Court dismissed the petition.

47. In *Union of India v. Muneesh Suneja*⁹ the detenu challenged an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by filing a petition in the High Court of Delhi which was withdrawn. Then he filed a similar petition in the High Court of Punjab and Haryana wherein he did not disclose the fact as to filing of the earlier petition and withdrawal thereof and obtained relief. In an appeal by the Union of India against the order of the High Court, this Court observed that non-disclosure of the fact of filing a similar petition and withdrawal thereof was indeed fatal to the subsequent petition.

48. A special reference may be made to a decision of this Court in *All India State Bank Officers Federation v. Union of India*¹⁰. In that case, promotion policy of the Bank was challenged by the Federation by filing a petition in this Court under Article 32 of the Constitution. It was

supported by an affidavit and the contents were affirmed by the President of the Federation to be true to his "personal knowledge". It was stated: (SCC p. 337, para 2)

"2. ... [T]he petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court."



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In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was "false". The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that the promotion policy was implemented and 58 officers were promoted who were not made parties to the petition. In the affidavit-in-rejoinder, once again, the stand taken by the petitioner was sought to be justified. It was stated: "The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Secondly, the petitioners even today do not know the names of all such 58 candidates who have been promoted/favoured." It was contended on behalf of the Bank that even that statement was false. Not only the petitioner Federation was aware of the names of all the 58 officers who had been promoted to the higher post, but they had been joined as party-respondents in the writ petition filed in the Karnataka High Court, seeking stay of promotion of those respondents. It was, therefore, submitted that the petitioner had not come with clean hands and the petition should be dismissed on that ground alone.

49. "Strongly disapproving" the explanation put forth by the petitioner and describing the tactics adopted by the Federation as "abuse of process of court", this Court observed: (*All India State Bank Officers Federation case*¹⁰, SCC pp. 340-41, paras 9 & 11)

"9. ... There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. ...

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11. Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of

the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. *It seems the object here in filing different petitions in different courts was a totally different and not very laudable one.*"

(emphasis supplied)

50. "Deeply grieved" by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a premier bank of the country, the Court observed: (*All India State Bank Officers Federation case*¹⁰, SCC p. 342, para 12)



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"12. We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. *We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.*"

(emphasis supplied)

51. Yet in another case in *Vijay Syal v. State of Punjab*¹¹ this Court stated: (SCC p. 420, para 24)

"24. In order to sustain and maintain the 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 the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.”

52. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

53. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

— — —

[†] Arising out of SLP (C) No. 17005 of 2006. From the Judgment and Order dated 16-2-2005 of the High Court of Orissa, Cuttack in Misc. Cases Nos. 9 and 10 of 2005 in Review Petition No. 4 of 2002

¹ (1994) 1 SCC 1

² (2007) 4 SCC 221

³ (1917) 1 KB 486 : 86 LKKB 257 : 116 LT 136 (CA)

⁴ (1977) 2 SCC 431

⁵ (1983) 3 SCC 333

⁶ (1983) 4 SCC 575 : 1983 SCC (Cri) 872

⁷ (1996) 4 SCC 297

⁸ (2002) 9 SCC 601 : 2002 SCC (L&S) 1085

⁹ (2001) 3 SCC 92 : 2001 SCC (Cri) 433

¹⁰ 1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454

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¹¹ (2003) 9 SCC 401 : 2003 SCC (L&S) 1112

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**(2010) 2 Supreme Court Cases 114 : (2010) 1 Supreme Court
Cases (Civ) 324 : 2009 SCC OnLine SC 1867**

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

DALIP SINGH . . Appellant;

Versus

STATE OF UTTAR PRADESH AND OTHERS . .
Respondents.

Civil Appeal No. 5239 of 2002[±], decided on December 3, 2009

**A. Practice and Procedure — Abuse of process — New creed of dishonest
litigants, noticed and strongly deprecated — Denial of any relief to such
persons, emphasised — Constitution of India — Arts. 136, 226 & 32**

Held :

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 the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, the post-Independence period has seen drastic changes in our value system. The materialism has overshadowed 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 the last 40 years, a new 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.

(Paras 1 and 2)

**B. Tenancy and Land Laws — Ceiling on land — Surplus land —
Redetermination of/Determination on merits — Entitlement to — Matter
delayed by tenure-holder and his heirs by misleading court and suppressing
facts — Effect**

— Tenure-holder delaying matter and taking plea of illness as well as non-
receipt of notice under S. 10(1), U.P. Imposition of Ceiling on Land Holdings
Act, 1960 (1 of 1961) for determination of surplus land — Tenure-holder
not producing any medical certificate or evidence regarding illness —
Prescribed authority passing ex parte order against tenure-holder — Tenure

-holders by taking said plea delaying matter by obtaining a stay from High Court, which afterwards was vacated when facts became clear — Even in Supreme Court tenure-holders taking false plea of non-receipt of S. 10(1) notice — Effect — On facts, held, tenure-holders are not entitled to be heard on merits — Directions for distribution of surplus land of appellants, already effectuated on directions of High Court, affirmed — Civil Procedure Code, 1908 — Or. 6 R. 7 — Inconsistent and alternative plea — When amounts to suppression of facts — Party prima facie suppressing facts and misleading court — Practice and Procedure — Abuse of process — Consequences — Denial of hearing



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C. Constitution of India — Arts. 32, 226 and 136 — Maintainability — Abuse of process — Party approaching court suppressing facts and misleading court — Effect — Party suppressing facts, held, is not entitled to be heard on merits and cannot invoke the extraordinary/discretionary jurisdiction under Arts. 32, 226 and 136

D. Constitution of India — Arts. 136 and 226 — Costs — Exemplary costs — When warranted — Tenure-holder (and his heirs) delaying determination of surplus lands by misleading court and suppressing facts and dubiously obtaining stay on distribution of surplus of their tenure by invoking Art. 226 — High Court noticing this, directing distribution of surplus land of the tenure-holders, which were distributed among landless persons — Tenure-holders again invoking Art. 136 with their false pleas and suppressing facts — Though exemplary costs could have been imposed, on facts such costs not imposed as their surplus land had already been distributed among landless poor persons — Practice and Procedure — Costs — Exemplary costs — Abuse of process

Dismissing the appeal, the Supreme Court

Held :

The making of patently false statement on oath by the appellant tenure-holders is amazing. The appellants efforts to mislead the authorities and the courts got transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and the Supreme 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, their prayer for setting aside the orders of the prescribed authority and the appellate authority cannot be entertained.

(Paras 20 to 24)

Keeping in view the fact that possession of the surplus land was taken in 2002 and the same was distributed among landless poor persons, no exemplary costs are being imposed on the appellants.

(Para 25)

Article 136 does not confer a right of appeal on any party. It confers discretion to grant leave to appeal in appropriate cases. The Constitution has not made the Supreme Court a regular court of appeal or a court of error. Interference under Article 136 can be made where justice, equity and good conscience require such intervention. While exercising discretionary and equitable jurisdiction under Article 136, 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.

(Paras 8 and 9)

A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221; *Sunil Poddar v. Union Bank of India*, (2008) 2 SCC 326, *relied on*

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. 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 a petition filed under Article 226 of the Constitution.

(Paras 4 and 7)



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Hari Narain v. Badri Das, AIR 1963 SC 1558; *Welcom Hotel v. State of A.P.*, (1983) 4 SCC 575 : 1983 SCC (Cri) 872; *G. Narayanaswamy Reddy v. Govt. of Karnataka*, (1991) 3 SCC 261; *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1; *Prestige Lights Ltd. v. SBI*, (2007) 8 SCC 449; *R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486 (CA), *relied on*

Jurisdiction under Articles 32 and 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with 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.

(Para 10)

K.D. Sharma v. SAIL, (2008) 12 SCC 481; *G. Jayashree v. Bhagwandas S. Patel*, (2009) 3 SCC 141, *relied on*

SS-D/44363/C

Advocates who appeared in this case:

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3. (2008) 2 SCC 326, *Sunil Poddar v. Union Bank of India* 118f-g
4. (2007) 8 SCC 449, *Prestige Lights Ltd. v. SBI* 118b, 118c-d
5. (2007) 4 SCC 221, *A.V. Papayya Sastry v. Govt. of A.P.* 118e-f
6. (1994) 1 SCC 1, *S.P. Chengalvaraya Naidu v. Jagannath* 118a
7. (1991) 3 SCC 261, *G. Narayanaswamy Reddy v. Govt. of Karnataka* 117e
8. (1983) 4 SCC 575 : 1983 SCC (Cri) 872, *Welcom Hotel v. State of A.P.* 117d-e
9. AIR 1963 SC 1558, *Hari Narain v. Badri Das* 117a-b

10. (1917) 1 KB 486 (CA), *R. v. Kensington Income
Tax Commissioners*

118c

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 the justice-delivery system which was in vogue in the 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 overshadowed 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.

2. In the last 40 years, a new 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



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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.

3. In *Hari Narain v. Badri Das*¹ this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

"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 or 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 characterises 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."

4. In *Welcom Hotel v. State of A.P.*² 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.

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka*³ 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: (SCC p. 263, para 2)

"2. ... 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."

6. In *S.P. Chengalvaraya Naidu v. Jagannath*⁴ the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. v. SBI*⁵ 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 a 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*⁶, and observed: (*Prestige Lights Ltd. case*⁵, SCC p. 462, para 35)

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.

8. In *A.V. Papayya Sastry v. Govt. of A.P.*⁷ 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.

9. In *Sunil Poddar v. Union Bank of India*⁸ 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.



10. In *K.D. Sharma v. SAIL*⁹ 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 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. Jayashree v. Bhagwandas S. Patel*¹⁰.

11. This appeal, which is directed against the 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 the 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 CLH Form 4. For the sake of convenient reference, the notice is reproduced below:

"CLH FORM 4
(See Rule 8)

[Form of notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960]

To,

<i>Name of tenure-holder</i>	Shri Praveen Singh,
<i>With parentage</i>	s/o Shri Raghubir Singh, and
<i>Address</i>	r/o Village Tisotara, PO 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 CLH Form 1, published under Section 9;

And whereas the statement of all holdings held by you in the State on 8-6-1973, 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.

sd./-

Signature of the prescribed authority of the Sub-Division
Tehsil Najibabad."

12. 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

10-12-1975

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"

13. 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



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that no valid ground has been made out for reconsidering the matter after six months.

14. The appeal preferred by Shri Praveen Singh against the order of the prescribed authority was dismissed by the 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 the appellate authority in Writ Petition No. 8342 of 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.

15. In compliance with 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 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.

16. The legal representatives of Shri Praveen Singh jointly filed Civil Miscellaneous Writ Petition No. 22790 of 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

Para 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 conducted before the prescribed authority*. True copy of the application dated 8-7-1976 of the petitioner's 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 petitioner's father is annexed herewith as Annexure 3."

(emphasis added)

17. 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



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finally dismissed and during the interregnum the appellant continued to enjoy the property. In the special leave petition filed against the order of the High Court, notice was issued on 12-10-2001, but the appellant's 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 IA No. 9 of 2004.

18. After service of notice, Respondents 1 to 3 filed counter in the form of an affidavit of Shri Pradip Kumar Singh, Additional Tahsildar, District Bijnor, U.P. In his affidavit, Shri Pradip Kumar gave details of the steps taken by the prescribed authority in terms of Sections 10(1) and 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 Paras 4(iv) and (v) of the counter-affidavit which 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 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 the 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 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 of 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 duty 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 a notification regarding publication of surplus land in the Official Gazette which was so published on 5-6-1976."



19. Shri Sunil Kumar Singh, son of the appellant Dalip Singh and grandson of late Shri Praveen Singh filed rejoinder-affidavit dated 18-2-2002. In Para 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 the father of the petitioner could not file any show cause without going through the abovereferred statement prepared under Section 10(1) of the Act."

20. We have heard the learned counsel for the parties and scrutinised 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 Para 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 appellant succeeded in persuading the High Court to pass an interim order which resulted in frustrating the efforts made by the authority concerned 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.

21. A perusal of the application dated 8-7-1976 submitted by Shri Praveen Singh for setting aside the 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 Para 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.

22. 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 the order dated 27-11-1975 and the appellate authority declined to entertain his prayer for 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 the appellate authority which, as mentioned above, resulted in frustration of the action to be taken by the authority concerned 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.

23. 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.

24. 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.

25. In the result, the appeal is dismissed. We would have saddled the appellant 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.

— — —

* From the Judgment and Order dated 21-5-2001 of the High Court of Judicature at Allahabad in Civil Misc. WP No. 22790 of 1990

¹ AIR 1963 SC 1558

² (1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015

³ (1991) 3 SCC 261 : AIR 1991 SC 1726

⁴ (1994) 1 SCC 1 : JT (1993) 6 SC 331

⁵ (2007) 8 SCC 449

⁶ (1917) 1 KB 486 (CA)

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⁷ (2007) 4 SCC 221 : AIR 2007 SC 1546

⁸ (2008) 2 SCC 326

⁹ (2008) 12 SCC 481

¹⁰ (2009) 3 SCC 141

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REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 4522-4524 OF 2022
(@ DIARY NO. 16486/2022)

THE STATE OF ANDHRA PRADESH **APPELLANT(S)**

VERSUS

RAGHU RAMAKRISHNA RAJU
KANUMURU (M.P.) **RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

Permission to file appeal without certified/plain copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts notice on behalf of the sole respondent, and as such, we have heard the matter finally.

1. The appellant challenges the order dated 6th May 2022 passed by the National Green Tribunal, Principal Bench, New

Delhi (hereinafter referred to as the “NGT”) in O.A. No.361 of 2021, vide which it prohibited the appellant from undertaking any further construction. The appellant also challenges the order dated 20th May 2022 passed by the learned NGT in I.A. Nos. 117 and 118 of 2022 in O.A. No. 361 of 2022, vide which the application seeking vacation of stay imposed vide order dated 6th May 2022 was rejected.

2. The appellant was already running a resort at Rushikonda Hill, near Visakhapatnam. According to the appellant, after obtaining the necessary permission, it has demolished the existing resort and is re-constructing the resort at the same place with additional facilities.

3. A writ petition being W.P. (P.I.L.) No.241 of 2021, challenging the said construction, has already been filed before the High Court of Andhra Pradesh at Amaravati. In the said writ petition, the Division Bench of the High Court has passed the following order on 16th December 2021:

“In the meanwhile, the construction activities and other allied activities in relation to the subject project, if any undertaken, shall be strictly in accordance with the permission accorded by the Ministry of Environment,

Forest and Climate Change, as well as the existing master plan.”

4. It appears that the aforesaid writ petition before the High Court was filed on 8th December 2021. However, a letter addressed by the respondent was sent on 31st October 2021 to the learned NGT. The respondent is a sitting Member of Parliament from one of the constituencies in the State of Andhra Pradesh. The learned NGT, after taking cognizance of the said letter, initiated the proceedings in O.A. No.361 of 2021. It further appears from the record that the learned NGT had appointed an Experts Committee on 17th December 2021 which submitted its Report on 29th March 2022. A perusal of the said report would reveal that the said Experts Committee consisting of four experts did not find any violation in the construction that was carried out by the appellant.

5. However, the learned NGT again, vide its order dated 6th May 2022, appointed a 2nd Experts Committee. The report of the said 2nd Experts Committee is still awaited. However, without waiting for the said report, by the same order, the

learned NGT directed that no further construction to be undertaken.

6. It appears that after the order dated 6th May 2022 was passed by the learned NGT, the appellant filed an application for vacating stay on construction as directed in the said interim order dated 6th May 2022 passed by the learned NGT. However, the same was also rejected by the learned NGT vide its order dated 20th May 2022. Both these orders are impugned in the present appeals.

7. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant, submitted that when the High Court of competent jurisdiction was already in seisin of the matter, the learned NGT could not have entertained a lis with regard to the same cause of action. He submitted that though this fact was brought to the notice of the learned NGT, the learned NGT refused to vacate the interim order dated 6th May 2022, which was in conflict with the order of the High Court dated 16th December 2021.

8. Dr. Singhvi submitted that NGT is a Tribunal, which is subordinate to the High Court in so far as the territorial

jurisdiction of the High Court is concerned. He, therefore, submitted that the very continuation of the proceedings before the learned NGT is not sustainable in law.

9. Shri Balaji Srinivasan, learned counsel appearing on behalf of the respondent, on the contrary, submitted that the appellant has acted in gross breach of the order dated 16th December 2021 passed by the High Court of Andhra Pradesh at Amravati. He submitted that the construction is rampantly going on in blatant violation of the order of the High Court. Contempt petition has already been filed before the High Court, wherein the High Court after taking cognizance of the blatant violation, issued notice on 4th May 2022.

10. This Court, in the case of ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***¹, has observed thus:

“**12.** The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article

¹ (2013) 11 SCC 404

141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is *sine qua non* for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. [Ref. East India Commercial Companies Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand & Ors. [(2008) 10 SCC 1]"

11. In any case, no law is necessary to state that insofar as the Tribunals are concerned, they would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned. A reference in this respect was also made to the judgment of the Constitution Bench of this

Court in the case of ***L. Chandra Kumar v. Union of India and Others***².

12. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.

13. In that view of the matter, we are of the considered view that the continuation of the proceedings before the learned NGT for the same cause of action, which is seized with the High Court, would not be in the interest of justice.

14. We, therefore, quash and set aside the proceedings

² (1995) 1 SCC 400

pending before the learned NGT in O.A. No.361 of 2021.

15. We further find that taking into consideration the serious allegations made by the respondent, it will be appropriate that all these facts are placed before the High Court and the High Court considers passing appropriate orders in accordance with law so as to strike a balance between the development and the environmental issues.

16. Needless to state that though development is necessary for economical progress of the nation, it is equally necessary to safeguard the environment so as to preserve pollution free environment and ecology for the future generations to come.

17. We, therefore, find that it will be appropriate that the parties move the High Court for appropriate orders. The respondent would be at liberty to file an application for impleadment before the High Court in the pending proceedings, which would be considered by the High Court in accordance with law.

18. Though, the High Court has permitted construction to proceed in accordance with law, we find that till the High Court takes a fresh call on the said issue, it will be necessary

to issue the following direction:

- (a) Until the High Court considers the issue, the construction will be permitted only on the area where the construction existed earlier and which has been demolished and the flat area.

19. Dr. Singhvi, learned Senior Counsel appearing on behalf of the State, on instructions from Shri Mahfooz Ahsan Nazki, stated that the appellant would not claim any equities on account of the construction, which is permitted to be proceeded further.

20. We further clarify that we have not expressed any opinion on the merits of the matter and the parties would be at liberty to raise all the issues available to them before the High Court which shall be considered in accordance with law. Since the learned NGT has already constituted an Experts Committee, the High Court would be at liberty to take into consideration the report of the said Experts Committee or if it finds appropriate may appoint other Committee as it deems fit.

21. The appeals stand disposed of in the above terms.

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

.....J.
(B.R. GAVAI)

.....J.
(HIMA KOHLI)

NEW DELHI;
June 01, 2022.

ITEM NO.3

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 16486/2022

(Arising out of impugned Interim order dated 06-05-2022 in OA No. 361/2021 20-05-2022 in IA No. 117/2022 20-05-2022 in IA No. 118/2022 passed by the National Green Tribunal)

THE STATE OF ANDHRA PRADESH

Appellant(s)

VERSUS

RAGHU RAMAKRISHNA RAJU KANUMURU (M.P)

Respondent(s)

(IA No.80661/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80659/2022-STAY APPLICATION and IA No.80658/2022-PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER and IA No.81808/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 01-06-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MS. JUSTICE HIMA KOHLI
(VACATION BENCH)

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. S. Niranjan Reddy, Sr. Adv.
Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Advocate
Mr. Shaik Mohamad Haneef, Adv
Mr. T. Vijaya Bhaskar Reddy, Adv
Mr. K.V.Girish Chowdary, Adv
Ms. Rajeswari Mukherjee, Adv
Ms. Akhila Palem, Adv
Mr. Abhishek Sharma, Adv
Mr. Sahil Raveen, Adv

For Respondent(s) Mr. Balaji Srinivasan, AOR

UPON hearing the counsel the Court made the following
O R D E R

Permission to file appeal without certified/plain
copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts
notice on behalf of the sole respondent.

The appeals stand disposed of in terms of the
signed Reportable Judgment. Pending application(s), if
any, shall also stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Ranjana Shailey)
Court Master

(Signed Reportable Judgment is placed on the file)

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 4522-4524 OF 2022
(@ DIARY NO. 16486/2022)

THE STATE OF ANDHRA PRADESH **APPELLANT(S)**

VERSUS

RAGHU RAMAKRISHNA RAJU
KANUMURU (M.P.) **RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

Permission to file appeal without certified/plain copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts notice on behalf of the sole respondent, and as such, we have heard the matter finally.

Signature Not Verified
Digitally signed by
GEETA ARUN
Date: 2022.06.06
16:42:43 IST
Reason:

1. The appellant challenges the order dated 6th May 2022 passed by the National Green Tribunal, Principal Bench, New

Delhi (hereinafter referred to as the “NGT”) in O.A. No.361 of 2021, vide which it prohibited the appellant from undertaking any further construction. The appellant also challenges the order dated 20th May 2022 passed by the learned NGT in I.A. Nos. 117 and 118 of 2022 in O.A. No. 361 of 2022, vide which the application seeking vacation of stay imposed vide order dated 6th May 2022 was rejected.

2. The appellant was already running a resort at Rushikonda Hill, near Visakhapatnam. According to the appellant, after obtaining the necessary permission, it has demolished the existing resort and is re-constructing the resort at the same place with additional facilities.

3. A writ petition being W.P. (P.I.L.) No.241 of 2021, challenging the said construction, has already been filed before the High Court of Andhra Pradesh at Amaravati. In the said writ petition, the Division Bench of the High Court has passed the following order on 16th December 2021:

“In the meanwhile, the construction activities and other allied activities in relation to the subject project, if any undertaken, shall be strictly in accordance with the permission accorded by the Ministry of Environment,

Forest and Climate Change, as well as the existing master plan.”

4. It appears that the aforesaid writ petition before the High Court was filed on 8th December 2021. However, a letter addressed by the respondent was sent on 31st October 2021 to the learned NGT. The respondent is a sitting Member of Parliament from one of the constituencies in the State of Andhra Pradesh. The learned NGT, after taking cognizance of the said letter, initiated the proceedings in O.A. No.361 of 2021. It further appears from the record that the learned NGT had appointed an Experts Committee on 17th December 2021 which submitted its Report on 29th March 2022. A perusal of the said report would reveal that the said Experts Committee consisting of four experts did not find any violation in the construction that was carried out by the appellant.

5. However, the learned NGT again, vide its order dated 6th May 2022, appointed a 2nd Experts Committee. The report of the said 2nd Experts Committee is still awaited. However, without waiting for the said report, by the same order, the

learned NGT directed that no further construction to be undertaken.

6. It appears that after the order dated 6th May 2022 was passed by the learned NGT, the appellant filed an application for vacating stay on construction as directed in the said interim order dated 6th May 2022 passed by the learned NGT. However, the same was also rejected by the learned NGT vide its order dated 20th May 2022. Both these orders are impugned in the present appeals.

7. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant, submitted that when the High Court of competent jurisdiction was already in seisin of the matter, the learned NGT could not have entertained a lis with regard to the same cause of action. He submitted that though this fact was brought to the notice of the learned NGT, the learned NGT refused to vacate the interim order dated 6th May 2022, which was in conflict with the order of the High Court dated 16th December 2021.

8. Dr. Singhvi submitted that NGT is a Tribunal, which is subordinate to the High Court in so far as the territorial

jurisdiction of the High Court is concerned. He, therefore, submitted that the very continuation of the proceedings before the learned NGT is not sustainable in law.

9. Shri Balaji Srinivasan, learned counsel appearing on behalf of the respondent, on the contrary, submitted that the appellant has acted in gross breach of the order dated 16th December 2021 passed by the High Court of Andhra Pradesh at Amravati. He submitted that the construction is rampantly going on in blatant violation of the order of the High Court. Contempt petition has already been filed before the High Court, wherein the High Court after taking cognizance of the blatant violation, issued notice on 4th May 2022.

10. This Court, in the case of ***Priya Gupta and Another v.***

Additional Secretary, Ministry of Health and Family

Welfare and Others¹, has observed thus:

“**12.** The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article

¹ (2013) 11 SCC 404

141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. [Ref. East India Commercial Companies Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand & Ors. [(2008) 10 SCC 1]”

11. In any case, no law is necessary to state that insofar as the Tribunals are concerned, they would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned. A reference in this respect was also made to the judgment of the Constitution Bench of this

Court in the case of ***L. Chandra Kumar v. Union of India and Others***².

12. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.

13. In that view of the matter, we are of the considered view that the continuation of the proceedings before the learned NGT for the same cause of action, which is seized with the High Court, would not be in the interest of justice.

14. We, therefore, quash and set aside the proceedings

² (1995) 1 SCC 400

pending before the learned NGT in O.A. No.361 of 2021.

15. We further find that taking into consideration the serious allegations made by the respondent, it will be appropriate that all these facts are placed before the High Court and the High Court considers passing appropriate orders in accordance with law so as to strike a balance between the development and the environmental issues.

16. Needless to state that though development is necessary for economical progress of the nation, it is equally necessary to safeguard the environment so as to preserve pollution free environment and ecology for the future generations to come.

17. We, therefore, find that it will be appropriate that the parties move the High Court for appropriate orders. The respondent would be at liberty to file an application for impleadment before the High Court in the pending proceedings, which would be considered by the High Court in accordance with law.

18. Though, the High Court has permitted construction to proceed in accordance with law, we find that till the High Court takes a fresh call on the said issue, it will be necessary

to issue the following direction:

- (a) Until the High Court considers the issue, the construction will be permitted only on the area where the construction existed earlier and which has been demolished and the flat area.

19. Dr. Singhvi, learned Senior Counsel appearing on behalf of the State, on instructions from Shri Mahfooz Ahsan Nazki, stated that the appellant would not claim any equities on account of the construction, which is permitted to be proceeded further.

20. We further clarify that we have not expressed any opinion on the merits of the matter and the parties would be at liberty to raise all the issues available to them before the High Court which shall be considered in accordance with law. Since the learned NGT has already constituted an Experts Committee, the High Court would be at liberty to take into consideration the report of the said Experts Committee or if it finds appropriate may appoint other Committee as it deems fit.

21. The appeals stand disposed of in the above terms.

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

.....**J.**
(B.R. GAVAI)

.....**J.**
(HIMA KOHLI)

NEW DELHI;
June 01, 2022.

ITEM NO.3

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 16486/2022

(Arising out of impugned Interim order dated 06-05-2022 in OA No. 361/2021 20-05-2022 in IA No. 117/2022 20-05-2022 in IA No. 118/2022 passed by the National Green Tribunal)

THE STATE OF ANDHRA PRADESH

Appellant(s)

VERSUS

RAGHU RAMAKRISHNA RAJU KANUMURU (M.P)

Respondent(s)

(IA No.80661/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80659/2022-STAY APPLICATION and IA No.80658/2022-PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER and IA No.81808/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 01-06-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MS. JUSTICE HIMA KOHLI
(VACATION BENCH)

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. S. Niranjan Reddy, Sr. Adv.
Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Advocate
Mr. Shaik Mohamad Haneef, Adv
Mr. T. Vijaya Bhaskar Reddy, Adv
Mr. K.V.Girish Chowdary, Adv
Ms. Rajeswari Mukherjee, Adv
Ms. Akhila Palem, Adv
Mr. Abhishek Sharma, Adv
Mr. Sahil Raveen, Adv

For Respondent(s) Mr. Balaji Srinivasan, AOR

UPON hearing the counsel the Court made the following
O R D E R

Permission to file appeal without certified/plain
copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts
notice on behalf of the sole respondent.

The appeals stand disposed of in terms of the
signed Reportable Judgment. Pending application(s), if
any, shall also stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Ranjana Shailey)
Court Master

(Signed Reportable Judgment is placed on the file)

~~Item No.2 & 3:~~

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 102 of 2020 (SZ)

With

Original Application No. 151 of 2020 (SZ)

IN THE MATTER OF:

Nishanth Gopal

Aged 38 years

S/o. Gopalakrishnan M.V.

Residing at Mundakathil House,

Thottappally P.O., Alappuzha District

Kerala – 688 561.

... Applicant(s)

Versus

1) Union of India

Through the Secretary

Ministry of Environment, Forests & Climate Change

Indira Paryavaran Bhavan

Jor Bagh, New Delhi – 110 003.

2) Union of India

Represented by its Secretary to Govt.

Ministry of Mines, Shastri Bhawan,

Dr. Rajendra Prasad Road,

New Delhi – 110 001.

3) State of Kerala

Represented by Chief Secretary

Government of Kerala,

Secretariat,

Thiruvananthapuram District

Kerala – 695 001.

4) Department of Atomic Energy

Represented by its Chairman

Anushakthi Bhavan

Chathrapathi Shivaji Maharaj Marg

Mumbai, Maharashtra – 400 001.

5) Director, Southern Region

Regional Centre for Atomic Minerals Exploration and Research (RCER)

Nagarbhavi, Bangalore

Karnataka – 560 072.

- 6) **The Kerala State Environment Impact Assessment Authority**
Represented by its Chairman
Pallimukku – Kannammoola Road
Overbridge, Velakudi
Thiruvananthapuram, Kerala – 695 024.
- 7) **Kerala Minerals and Metals Limited**
Represented by its Managing Director
N.H.66, Sankaramangalam, Chavara
Kollam District, Kerala – 691 583.
- 8) **The Assistant Manager**
Kerala Minerals and Metals Limited
N.H.66, Sankaramangalam, Chavara
Kollam District, Kerala – 691 583.
- 9) **The District Collector**
Alappuzha District
Having office at Civil Station,
Near District Panchayat Office,
Alappuzha District, Kerala – 688 001.
- 10) **Purakkad Grama Panchayat**
Represented by its Secretary
Purakkad P.O., Alappuzha District
Kerala – 685 561.
- 11) **IREL (India) Limited**
Represented by its Managing Director
Rare Earth Division, Udyogamandal P.O.,
Ernakulam District
Kerala – 680 501.
- 12) **Department of Irrigation**
Government of Kerala
Represented by its Secretary
Government Secretariat
Thiruvananthapuram District
Kerala – 695 001.
- 13) **The Chairman**
Kerala State Coastal Zone Management Authority (KCZMA)
4th Floor, Kerala State Road Transport Corporation (KSRTC)
Bus Terminal, Thampanoor,
Thiruvananthapuram, Kerala – 680 001.

(R13 Impleaded as per order in I.A. No.51/2020 dated 16.07.2020)

... Respondent(s)

WITH

Akhila Kerala Dheevara Sabha
 Represented by its General Secretary
 V. Dinakaran, Aged 75 years
 Residing at Sudeepam,
 Pannapra P.O., Alappuzha,
 Kerala – 688 004.

... Applicant(s)

Versus

1) State of Kerala

Represented by Chief Secretary to Government
 Secretariat, Thiruvananthapuram – 695 001.

2) Principal Secretary

Department of Industries and Commerce
 Government Secretariat,
 Thiruvananthapuram, Kerala – 695 001.

3) Principal Secretary

Department of Fisheries and Ports
 Government Secretariat
 Thiruvananthapuram – 695 001.

4) District Collector, Alappuzha

Collectorate, Civil Station
 Alappuzha, Kerala – 688 001.

5) Chief Engineer

Harbour Engineering Department
 Thiruvananthapuram, Kerala.

6) Secretary

Water Resources Department
 Thiruvananthapuram – 695 001.

...Original Respondents No.1 to 6

7) District Superintendent of Police

C CS B Road, Civil Station Ward,
 Alappuzha, Kerala – 688 012.
(R7 – Deleted as per order of the Tribunal dt.17.08.2020)

8) Managing Director

IREL,
 Beach Road No.38, Chavara,
 Kollam – 691 583.

9) Managing Director

KMML
 Sankaramangalam,
 Chavara, Kollam – 691 583.

10) Chief Engineer

Water Resources Department
 Thiruvananthapuram, Kerala – 695 001.

11) Principal Secretary

Environment Department
Secretariat, Thiruvananthapuram – 695 001.

12) Kerala State Environment Impact Assessment Authority

Represented by its Member Secretary
4th Floor, K.S.R.T.C. Bus Terminal Complex,
Thiruvananthapuram, Kerala – 695 001.

13) Purakkad Panchayat

Represented by its Secretary
Purakkad, Alappuzha District
Kerala – 688 561.

14) Secretary

Forest and Wildlife Department
Thiruvananthapuram,
Kerala – 695 001.

...Rearranged Respondents No.7 to 13/
Original Respondent No.8 to 14

15) Director

Central Water and Power Research Station
Khadakwasla, Pune – 411 024
Maharashtra, India.
(R15 – Deleted as per order of the Tribunal dt.17.08.2020)

16) Kerala Coastal Zone Management Authority

Represented by Member Secretary
4th Floor, KSRTC Bus Terminal
Thampanoor, Thiruvananthapuram – 1.

...Rearranged Respondent No.14/
Original Respondent No.16

O.A. No.102/2020:

For Applicant(s): None.

For Respondent(s): Mr. Ashik Ahamed represented
Mr. G.M. Syed Nurullah Sheriff for R1.
Mr. Vignesh represented
Mr. E.K. Kumaresan for R3, R9, R12.
Ms. Mokshavathy represented
Mrs. Vidhyalakshmi Vipin for R6.
Mr. Krishna Srinivasan for
Mr. K. Anand, Sr. Adv. Along with
M/s. V. Sudha for R4, R11.
M/s. Ramasubramanian Associates for R5.
Mr. Vishnu for M/s. B.S. Krishnan Associations for R7, R8.
Mr. G. Prabhu for R13.

O.A. No.151/2020:

For Applicant(s): M/s. G. Rajkumar, R. Anitha & G. Pachaimmal

For Respondent(s): Mr. Vignesh represented
Mr. E.K. Kumaresan for R1 to R4, R6, R9, R10, R13.
Ms. Mokshavathy represented
Mrs. Vidhyalakshmi Vipin for R11.
Mr. Krishna Srinivasan for
Mr. K. Anand, Sr. Adv. Along with
M/s. V. Sudha for R7.
Mr. Vishnu for M/s. B.S. Krishnan Associations for R9.
Mr. G. Prabhu for R14.

Date of Judgment: 08th July 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

1. The Original Application [O.A. No.102 of 2020 (SZ)] was filed by an individual alleging that in the guise of desilting and dredging, illegal mining is being undertaken by the State of Kerala in Thottappalli Estuary/Kozhi Mouth in Alappuzha District and permission was granted to Indian Rare Earth Limited (IREL) and Kerala Minerals and Metals Limited (KMML) for the purpose of removal of the same and the Original Application [O.A. No.151 of 2020 (SZ)] was filed by an association raising the same issue seeking similar reliefs.
2. Common allegation in both the cases is that in the guise of dredging, desilting and widening of the Thottappalli River, extensive mining of rare minerals is being undertaken by them. They are misinterpreting the provisions of the Disaster Management Act, 2005 that it is intended for the purpose of protecting the area from flood etc. In both cases, the reliefs claimed are as follows:-

“O.A. No.102 of 2020:

A. “Pass an Order prohibiting the 7th and 8th respondent from carrying out extraction of Mineral Sand from Thottappally Estuary/Pozhi Mouth and transportation of the same in the light of G.O. (Rt.) No. 385/2019/WRD dated 31.03.2019 issued by the 12th respondent without obtaining requisite permissions contemplated under the relevant statutes viz., the Atomic Minerals Concession Rules, 2016. The Environmental Impact Assessment Notification, 2006, Kerala Panchayath Raj Act, 1994 and in complete violation of the provisions therein.

B. Pass an Order prohibiting the 7th and 8th Respondent from carrying out extraction of Mineral Sand from Thottappally Estuary/Pozhi Mouth and transportation of the same to outside without conducting a study of Independent Team having expertise in Environmental Degradation and Impact studies;

C. Call for the records pertaining to G.O. (Rt.) No. 385/2019/WRD dated 31.03.2019 issued by the 12th respondent and may be pleased to set aside the same;

D. To direct 7th and 8th respondent to observe the rigors cast upon them vide Annexure A3 Stop Memo issued by the 10th respondent;

E. Exempt the applicant from filing duly verified and attested affidavit in the prevailing situation of covid-19 pandemic;

F. Pass any other and further orders which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case. “

O.A. No.151 of 2020:

A) Declare that the activities of 8th and 9th respondent are illegal sand mining without any mining permit and environmental clearance, which is a violation of the provisions of Environment (Protection) Act, 1986?

B) Direct the 4th and 7th respondents to implement the stop memo issued against the activities of respondent companies by the local self government.

C) Direct the 4th respondent to take steps to initiate cognizance against the 8th and 9th respondent for violation of the Environment (Protection) Act, 1986.

D) Direct the respondent No. 1 & 4 to ensure that no mineral sand mining activities is conducted by the 8th and 9th respondents.

E) Direct the 1st respondent to rehabilitate and compensate those who lost their homes and livelihood due to coastal erosion caused as a result of excessive mineral sand mining.

F) Direct the 3rd and 6th respondents to cancel the annexure A1 and A3 orders.

G) Direct the 1st respondent to constitute an expert committee to assess the quantum of environmental damage in terms of money caused by the 8th and 9th respondent and recover the same.

H) Direct the 1st respondent to use the sand mined by the 8th and 9th respondent to protect area (Purakkad-Ambalappuzha) from the coastal erosion.

I) Direct the 1st and 14th respondent for compensatory a forestation of 650 Kattadi trees that were cut down under guidance of 4th and 7th respondent to facilitate mining.

J) Direct the 1st respondent state to look in ot the study conducted by 15th respondent Central Water and Power Research Station, Pune and immediately construct the 2nd part of the harbour to stop sea attack.

K) Pass such any other order, direction or reliefs as his Hon’ble Tribunal may deem fit in the interest of justice, equity and good conscience.”

3. The official respondents as well as party respondents including the State Coastal Zone Management Authority have filed independent statement contending that they are only flood mitigating activities which are permissible under the Disaster Management Act, 2005 and they were doing only dredging, desilting and widening of the area which is covered

by sand and on account of accumulation of the sand, free flow of water is being obstructed which resulted in flood in the nearby areas. In order to study the impact of the flood happened in 2018, a study was conducted by the State of Kerala employing Dr. Swaminathan and IIT Madras in co-ordination with the Irrigation Department and it is on the basis of the recommendations made by that committee, this work was entrusted to KMML & IREL, for which, necessary permissions were also obtained from the Department of Atomic Energy. Further, the same issue has been raised by the local people before the Hon'ble High Court of Kerala by filing Writ Petitions as **W.P.(C) No.11060 of 2020** (Vijayan Vs. State of Kerala & Ors.) and **W.P.(C) No.15520 of 2021** (Suresh Kumar & Ors. Vs. Union of India & Ors.) and the Hon'ble High Court, by Judgment dated 17.11.2021, categorically held that this is a permissible activity and this is being done under the Disaster Management Act, 2005 to protect the area as flood mitigation arrangement and it will not be a violation of CRZ Notification, 2011 and as per the amendment to the EIA Notification, 2006, the dredging and desilting of river and for their maintenance and any activity being done under the Disaster Management Act, 2005 are exempted from obtaining Environmental Clearance (EC), as it will not amount to mining and ultimately, dismissed the writ petitions holding that there is no interference required and whatever done by the State Government is strictly in accordance with law and there is no necessity to take any action, on the basis of the allegations made. So, they prayed for dismissal of the application on that ground.

4. Heard the learned counsel appearing for the applicant in O.A. No.151/2020, learned Senior Counsel and other learned counsel appearing for respondents in both the cases.
5. The applicant in O.A. No.102/2020 (SZ) is not being represented since long time, the learned counsel appearing for the applicant in O.A. No.151/2020 (SZ) was heard and he submitted that this Tribunal in **Original Application No.75 of 2020 (SZ)** (Tribunal on its own Suo Motu on the news item published in The Hindu dated 30.05.2020 titled as "Kerala Forest Department hold to permit sand removal from Pampa" And The Chief Secretary of Kerala & Ors.) wherein this Tribunal had distinguished

the provisions of the Disaster Management Act, 2005 and its overriding effect on environmental laws and observed that for doing immediate reliefs of protection due to flood, they have got power to do certain things immediately, as they cannot wait for obtaining permission from the various departments under the environmental laws. But when they wanted to implement the flood mitigation plan, as required under the Disaster Management Act, they will have to abide by the environmental laws as the overriding effect provided under the Disaster Management Act will only act for the purpose for which it has been intended and when there are two special statutes dealing with same issue, and they will operate within their own limitations and the overriding effect cannot be extended for more than what was intended by the legislature in the statute. So, in view of that decision, the decision of the Hon'ble High Court of Kerala is not correct, according to the learned counsel.

6. On the other hand, the learned Senior Counsel Mr. K. Anand appearing for KMML and Mr. Krishna Srinivasan appearing for IREL submitted that the Hon'ble High Court had gone into the issue in detail and come to the conclusion that none of the restrictions mentioned in the environmental laws will be applicable to the facts of the case and also observed that it will not amount to mining, as there is no winning of mineral involved and it is only dredging and desilting which is required for flood mitigation process and also observed that it was based on the study conducted by the State Government with expert agencies, they are implementing the recommendations for the purpose of protecting the life of the people who are likely to be affected by flood during monsoon.
7. The learned counsel Mr. Krishna Srinivasan appearing for M/s. IREL also submitted that no sand is removed from that area and after desilting and dredging was done of the excess sand which affects free flow of water, that has been deposited in the river bed after it was segregated and only valuable minerals have been taken to their unit and the remaining sand is being spread over in that area itself for the purpose of sand nourishment of that area.

8. The learned Senior Counsel also relied on the decision of the Hon'ble Apex Court in **State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru (M.P.) reported in 2022 SCC Online SC 728** wherein the Hon'ble Apex Court has observed that once the Constitutional Court having jurisdiction had entertained a similar issue and passed some directions, then the National Green Tribunal should not have entertained the issue on similar matter and should not have granted any further directions and observed that the order of the Constitutional Court will be binding on the statutory Tribunals including the National Green Tribunal, as they are coming under the supervisory jurisdiction of the Constitutional Court under Article 226 of the Constitution of India and as such, there is no necessity for this Tribunal to proceed with the matter.
9. Considered the pleadings and also the submissions made by the learned counsels.
10. The grievance in both these applications is regarding illegal mining is being done in Thottappali River bed in the guise of the Disaster Management activities and dredging and desilting.
11. It was in a way admitted by both the parties that they were two Writ Petitions filed before the Hon'ble High Court of Kerala as W.P.(C) No.11060 of 2020 (Vijayan Vs. State of Kerala & Ors.) and W.P.(C) No.15520 of 2021 (Suresh Kumar & Ors. Vs. Union of India & Ors.), challenging the work of mechanized loading and transportation of mineral sand from Thottappalli Kuzhi Mouth which is the same issue that has been raised in both these cases as well.
12. The Hon'ble High Court of Kerala, after considering the pleadings and submissions made by both the parties, by Common Judgment dated 17.11.2021, came to the conclusion that it will not violate the CRZ Notification, 2011, EIA Notification, 2006 and the MMDR Act, as these acts are exempted under the EIA Notification, 2006 as amended in 2016 and 2018.

13. Further, Section 72 of the Disaster Management Act, 2005 will have overriding effect over any other law and any activity done under the provisions of the Disaster Management Act will not be covered by any of the other enactments during the time of crisis and ultimately, found that there is no merit in the Writ Petitions and dismissed the same.

14. It is true that this Tribunal in O.A. No.75 of 2020 (SZ) by Judgment dated 19.04.2022 distinguished the overriding effect mentioned in Section 72 of the Disaster Management Act over the environmental laws. This Tribunal also observed that as an immediate relief for flood mitigation crisis, the provision of the Disaster Management Act will apply and they need not obtain any further permission. But in respect of implementation of long-term measures for preventing future flood mitigation for disaster mitigation, then they will have to abide by environmental laws as both these Acts are dealing with protection of environment and it should not be said to be contrary to each other. However, in view of the fact that the Hon'ble High Court had permitted this activity and held that it was legally done based on the detailed technical study and other studies and recommendations made by the Expert body which is being implemented by the State of Kerala for the purpose of protecting the life of the people which will have primary impact, we do not think that it is necessary to deviate from that findings and give any different findings in this matter, in view of the dictum laid down in State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru (M.P.) reported in 2022 SCC Online SC 728 wherein the Hon'ble Apex Court has held that *"In any case, no law is necessary to state that insofar as the Tribunals are concerned, they would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned. A reference in this respect was also made to the judgment of the Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India and Others (1995) 1 SCC 400."* and also observed that if two parallel proceedings were permitted to operate, then the authorities will be in a confusion as to which order will have to be complied with by them and the Constitutional Courts directions will be binding on the National Green Tribunal as well.

15. So under such circumstances, we feel that there is no necessity to proceed with these matters, as the issue raised in both these cases have been finally decided by the Hon'ble High Court of Kerala in the writ petitions stated supra.

16. The right of the applicant in both these cases, if aggrieved by the order of the Hon'ble High Court of Kerala to challenge the same before the appropriate forum are not barred by disposal of these applications.

17. Considering the circumstances, parties are directed to bear their respective cost in the respective Original Applications.

18. With the observations and directions, both these Original Applications are disposed of.

Sd/-
Justice K. Ramakrishnan, J.M.

Sd/-
Dr. Satyagopal Korlapati, E.M.

O.A. No.102/2020 (SZ) &
O.A. No.151/2020 (SZ)
08th July 2022. Mn.

NGT

Item No.05

(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)
Original Application No. 407/2022

Narayan Das Tulsani

...Applicant

Versus

State of Rajasthan

...Respondent

Date of hearing: 18.10.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Narayan Das Tulsani and Mr. Anil Tulsani, Advocates.

Respondent: Mr. Nishant Awana and Mr. G.S. Awana, Advocates
alongwith Mr. Pradeep Asnani, Regional Officer for
RSPCB, Bikaner.
Mr. Vikrant Pachnanda and Mr. Mukul Katyal, Advocates
for CPCB.
Mr. Nikhil Jain, Mr. Sanjeet Prohit, Advocates and Mr.
Shiv Prasad Nakate, MD, RIICO, Mr. Ajay Gupta, AGM,
(EM) Cell, RIICO and Mr. Mr. Vinod Kumar, Sr. Regional
Manager.

Application is registered based on a Letter Petition received by Email.

ORDER

1. Mr. Narayan Das Tulsani son of Late. Kishan Chand Tulsani resident of H.No. A-13, Karni Nagar, Pawanpuri near Sahyog park, Bikaner, Rajasthan has sent the present letter petition, which has been treated and registered as Original Application, complaining about violation of conditions of Environmental Clearance (EC) dated 11.04.2017 by Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO Ltd.).

2. The applicant has submitted that RIICO Ltd. had set up Karni industrial area in phases in the years 1998, 2000, 2005 and 2011. While mentioning the historical background and violations of environmental norms by RIICO Ltd. and issuance of letters/show cause notices in this regard, the applicant has also referred to letter dated 21.02.2022 of Regional Officer, Rajasthan State Pollution Control Board, Bikaner wherein it was observed that RIICO Ltd. has obtained EC from State Environment Impact Assessment Authority Rajasthan (SEIAA) on dated 11.04.2017. As per point No. 11 of EC, there is a provision of Rs. 2600 lacs to set up a CETP, Rs. 175 Lacs for STP, Rs. 300 Lacs for development of landfill site for waste disposal, and Rs. 800 Lacs for a line of internal effluent conveyance system etc., further as per point no. 13 of EC "RIICO Ltd. is proposing to install a CETP for treatment of effluent generated from existing Karni Industrial Area and Industrial Area Bichwal ensuring a Zero Liquid Discharge facility in the proposed project area". RIICO has not submitted compliance report or the conditions of EC. The applicant has submitted that despite EC conditions RIICO Ltd. has not made any arrangement for drainage of trade effluents. For the last 14 years, industrial effluents is getting accumulated in Karni Industrial Area and now 1500 million liters industrial effluents is accumulated in 146000 square meters area causing environmental pollution and contamination of water. Complaints regarding environmental pollution and non-compliance of EC conditions were made to Rajasthan PCB but no action has been taken.

3. Vide order dated 11.07.2022, this Tribunal constituted a Joint Committee comprising of the Regional Office of MoEF & CC, CPCB, CGWA, State PCB and District Magistrate, Bikaner and directed the same to submit Factual and Action Taken Report within two months.

4. In compliance thereof, the Joint Committee submitted Factual and Action Taken Report vide email dated 18.09.2022. Reply was also filed on behalf of State PCB vide email dated 16.09.2022.

5. Vide order dated 20.09.2022, this Tribunal impleaded (1) State of Rajasthan through Chief Secretary, Government of Rajasthan, (2) Integrated Regional Office of MoEF & CC, Jaipur (3) CPCB, (4) CGWA, (5) State PCB (6) District Magistrate, Bikaner as respondents No. 1 to 6 and directed issuance of notices to them. Personal appearance of the Managing Director, RIICO and Regional Officer of State PCB through VC was also ordered. Mr. Nishant Awana, Advocate for RSPCB and Mr. Nikhil Jain and Mr. Abhishek Bisht, Advocates for RIICO appeared on that date and sought time to file reply/response on behalf of RSPCB and RIICO.

6. Mr. Sivprasad Nakate, IAS, Director, RIICO and Mr. Pradeep Asnani, Regional Officer of State PCB have appeared before this Tribunal through VC.

7. Ld Counsel for RSPCB has submitted that Civil **Writ Petition (PIL) No. 10600 of 2020 titled Devkishan Gawlani Vs. State of Rajasthan and others** has been filed before Hon'ble High Court of Judicature of Rajasthan, Jodhpur seeking issuance of directions to RIICO to establish CETP/STP and to restrain the same from permitting to develop any industrial area in the Karni Industrial Area (Extension Project) till the establishment of CETP/STP and to ensure compliance with EC conditions by RIICO. Vide order dated 17.10.2022 Division Bench comprising of the Hon'ble the Chief Justice Mr. Pankaj Mithal and Hon'ble Mr. Justice Sandeep Mehta has directed respondents no. 4 and 5-Chairman and Secretary, RSPCB to take appropriate action in accordance with law against all polluting industries and, if necessary, against RIICO as well and to submit a factual report about the same within a period of six weeks. Ld.

Counsel for RSPCB has filed copy of the above said Writ Petition and order dated 17.10.2022 and has relied on the observations made by the Hon'ble Supreme Court in its order dated 01.06.2022 passed on Civil Appeal Nos. 4522-4524 of 2022 titled the State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru, Member of Parliament (M.P) in support of his submissions.

8. Since the Hon'ble High Court of Judicature of Rajasthan, Jodhpur is already seized with the matter on **Civil Writ Petition (PIL) No. 10600 of 2020 titled Devkishan Gawlani Vs. State of Rajasthan and others**, which was filed before filing of the present original application and for the purpose of avoiding duplicacy/conflict of orders, it will be appropriate that this Tribunal does not continue with the proceedings on the present original application as the applicant can also move to Hon'ble High Court of Judicature of Rajasthan, Jodhpur by way of appropriate proceedings for appropriate relief.

9. In view of the above, the application is disposed of with liberty to the applicant to move to Hon'ble High Court of Judicature of Rajasthan, Jodhpur by way of appropriate proceedings for appropriate relief.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

October 18, 2022
AG

Item No.01

Court No.1

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

Original Application No.10/2025/EZ

IN THE MATTER OF

Jatindra Kumar Singh,
S/o Mr. Kshirod Chandra Singh,
R/o Sansaratikira, Sahajbahal,
P.O.- Charpali-Barpali, Via B.B. Colony,
District – Jharsuguda, Odisha,
PIN-768211

.....Applicant(s)

Versus

- 1. State of Odisha,**
Through Chief Secretary,
Government of Odisha, General Administration Department,
Odisha Secretariat, Bhubaneswar,
PIN-751001
- 2. Ministry of Environment, Forest and Climate Change**
Through its Secretary, New Delhi,
Indira Paryavaran Bhawan, Jor Bag, New Delhi,
PIN-110003
- 3. Central Pollution Control Board,**
Through its Member Secretary,
Parivesh Bhawan, East Arjun Nagar,
New Delhi-110032
- 4. Odisha State Pollution Control Board,**
Through Member Secretary,
Paribesh Bhawan, A/118, Nilakantha Nagar,
Unit-8, Bhubaneswar-751 012
- 5. District Magistrate, Jharsuguda,**
Office of the District Magistrate and Collector,
Jharsuguda, Odisha,
PIN-768204
- 6. Municipal Commissioner of Jharsuguda,**
Jharsuguda Municipality, Mangal Bazar Rd,
District – Jharsuguda, Odisha,
PIN-768201
- 7. M/s JSW (Energy) Ind-Barath Energy (Utkal) Limited,**
Through Promoter/Vice President
Mr. K Rajashekara Rao and Mr. C Venkatarama Reddy,
Sahaibahal, P.O.-Charpali Barpali, Bandhbahal,

District – Jharsuguda, Odisha,
PIN-768211

8. JSW (Energy) Limited,

Through MD and CEO – Mr. Prashant Jain
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai (400051)

9. Mr. Prashant Jain,

Joint Managing Director and CEO of JSW (energy) Ltd.,
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai (400051)

.....Respondent(s)

Date of hearing: 24.01.2025

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

For Applicant(s) : Ms. Sweksha Prakash, Adv. (in Virtual Mode)

For Respondent(s): Mr. Prabhu Prasanna Behera, ASC for State of Odisha
(in Virtual Mode),
Mr. Surendra Kumar, Adv. for R-3 (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-4 (in Virtual Mode),
Mr. Barath Ashok K. Parija, Sr. Adv. for R-7, 8 & 9
(in Virtual Mode)

ORDER

1. The Applicant has filed this Original Application alleging that the Respondent No.7, namely, “M/s JSW (ENERGY) IND-BARATH ENERGY (UTKAL) LIMITED” established at Sahaibahal, PO-Charpali Barpali, Bandhbahal, District- Jharsuguda, Odisha has been operating as a power plant industry in the district Jharsuguda which is an “industrial unit” constructed illegally on forest land and has been polluting the environment of the region with smoke, ash, silo, dust and untreated trade effluents through its industrial operations.
2. It is stated that the Respondent No.7 is situated in close proximity to the residential population within only 30 meters of distance from village Sahajbahal, 120 meters from village Munda Pada and 350 meters from village Sansaratikra, 200 meters distance from the

government school of the village which is not only impacting the health of the residents of the village but also the children of the 2 government schools due to dense smoke from coal combustions, emissions from silo and dust in the air. It is also alleged that the Respondent No.7, "industrial unit" has been constructed on forest land

3. It is stated that ash and smoke has covered the residential houses, roads and infrastructure in the area and that the silo, chimney, boiler and ash pond of the Respondent No. 7 is only 50 meters from Sansaratikra village and the track hopper is 60 meters from Munda Pada.

4. It is stated that with regard to the same issue W.P.(C) No. 4167 of 2014 (in the matter of Anchalika Jana Kalyan Anusthan vs. Union of India and others) was filed in the Hon'ble High Court of Odisha at Cuttack in which an order has been passed by the Hon'ble High Court on 14.08.2023 directing the Opposite Party No.12, (i.e., the Respondent No.7 in the present Original Application) to vacate the forest land by removing all the structures and machineries from the encroached forest land within fifteen days. It is however, stated that till date the order of the High Court has not been complied with.

5. The relief claimed in the present Original Application reads as under:-

1. *That the Hon'ble Tribunal may be pleased to declare operations of the respondent no.7 as illegal and unauthorised and prohibit any further emission of toxic gases and smoke into the atmosphere.*
2. *That the Hon'ble Tribunal may be pleased to direct to respondent no 7 and 8 to close down their industrial unit which is operating illegally on forest land and to demolish the illegal structure and machinery.*

3. *That the Hon'ble Tribunal may be pleased to direct the respondent no 7 to stop all activities which are causing air pollution and immediately shift the chimney, ash pond and silo from the residential area and take other corrective actions to prevent further damage to the environment.*
 4. *That the Hon'ble Tribunal may be pleased to direct the respondent no 4,5,6,7,8,9 to take corrective actions to clear the water of pond (Kata).*
 5. *That the Hon'ble Tribunal may be pleased to direct the respondent no 7 to compensate for adversely impacting the environment by assessing the damage according to the polluter pays principle.*
 6. *Any other Relief which this Hon'ble Tribunal deems fit and proper in the interest of justice.*
6. From the reliefs claimed, we find that the Applicant is also seeking a direction to the Respondent Nos.7 and 8 to close down their industrial unit which is operating illegally on forest land and to demolish the illegal structure and machinery.
 7. We have heard the learned Counsel for the parties and have perused the documents on record.
 8. From the documents on record, we find that W.P.(C) No. 4167 of 2014 (*in the matter of Anchalika Jana Kalyan Anusthan vs. Union of India and others*) had been filed in the Hon'ble High Court of Orissa at Cuttack alleging therein that the Opposite Party No.12 therein (the Respondent Nos.7 and 8 herein) had encroached on forest land and had constructed buildings on forest land. The Hon'ble Division Bench of the High Court after calling for a counter-affidavit passed the following order dated 14.08.2023:-

"IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 4167 of 2014****Anchalika Jana Kalyan Anusthan****Petitioner***Mr. Gokulananda Pattanaik, Advocate**-versus-***Union of India and others****.... Opposite Parties***Mr. Debakanta Mohanty, A.G.A. for State**Mr. B.S. Rayaguru, CGC for OP Nos.1 & 3**Mr. Ramesh Singh, Senior Advocate assisted by
Mr. Venugopal Mohapatra and Ms. Aishwarya Ray, Advocate
for Opposite Party No.12***CORAM:****THE CHIEF JUSTICE****JUSTICE SAVITRI RATHO****Order No.****ORDER****14.08.2023**

07. 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Gokulananda Pattanaik, learned counsel appearing for the Petitioner, Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) appearing for the State Opposite Parties, Mr. B.S. Rayaguru, learned CGC for Opposite Parties No.1 & 3 and Mr. Ramesh Singh, learned Senior Counsel assisted by Mr. Venugopal Mohapatra and Ms. Aishwarya Ray, learned counsel for Opposite Party No.12.
3. In this Public Interest Litigation (PIL), the allegation has been made by the Petitioner that Opposite Party No.12 has encroached the forest land. The encroachment has been admitted by Opposite Party No.12 in their counter affidavit filed on 15th May, 2023. In the said affidavit, in para-12(c), it has been stated by Opposite Party No.12 that the total land requirement of the power plant project is 239.90 ha which includes 35.985 ha of revenue forest land. The said revenue forest land comprises an area of 21.898 ha in the village

Sahajbahal and an area of 14.087 ha in village Barpali under the Lakhanpur Tahasil of Jharsuguda district.

4. It has also been admitted that having encroached the land, Opposite Party No.12 had constructed buildings, thereafter, Opposite Party No.12 has applied for diversion of the forest land measuring 35.985 ha for establishment of the power plant. It has also been admitted by Opposite Party No.12 that they had carried on construction for the power plant unit and for setting up transmission towers for linking the power plant with the eastern power grid.

5. On 4th September, 2013 and 19th November 2013, Opposite Party No.12 had received notices from the District Forest Officer, Jharsuguda to stop their construction activities being carried on forest land. Thereafter, on 22nd January, 2014 an inspection of the alleged construction was undertaken by the Range Officer, Brajrajnagar and the Revenue Department staff of Lakhanpur Tahasil. In the report submitted pursuant to the joint enquiry, it was alleged that Opposite Party No.12 had constructed boiler, turbine, track hopper, chimney etc., over the forest lands admeasuring Ac 14.52 in Mouzas Sahajbal and Barpali.

6. It has also been admitted by Opposite Party No.12 that eight encroachment cases were instituted against them and they were levied fine. At this juncture, we asked Mr. Debakanta Mohanty, learned AGA appearing for the State to state what has happened after levying fine and whether Opposite Party No.12 is still in encroachment of the land or not. Mr. Mohanty, learned AGA could not give any answer off-hand. It is obvious that Opposite Party No.12 did not remove the structure and the machineries that they had set up on the said forest land.

7. By the order dated 17th May 2023, this Court had directed that the proposals submitted by Opposite Party No.12 for diversion of the forest land be considered in accordance with law and after hearing learned counsel for Opposite Party No.12, a reasoned order shall be passed in that regard by 1st July, 2023. It was also

directed that the State Government shall file an affidavit. Accordingly, the affidavit has been filed by Opposite Party No.2 on 1st August, 2023 stating that the proposals submitted by Opposite Party No.12, i.e. M/s. Ind-Barath Energy (Utkal) Ltd. for diversion of the forest land will be considered in accordance with law.

8. It has been stated that the appropriate authority for according approval for diversion of 34.63 ha out of 35.985 ha of the Revenue Forest land for establishment of 2x350 MW coal based Thermal Power Plant at Sahajbahal and Barpali villages under Lakhanpur Tahasil in Jharsuguda district is the Ministry of Environment, Forest & Climate Change, Integrated Regional Office, Bhubaneswar, i.e. Opposite Party No.3. We have gathered from the records that no such approval for diversion has been granted so far. But, surprisingly, Opposite Party No.12 is still on encroachment over the forest land.

9. Having noted the encroachment, as admitted by Opposite Party No.12, we direct the Opposite Party No.12 to vacate the forest land by removing all the structures and machineries from the encroached forest land within fifteen days from today.

10. The Opposite Party No.12 is also directed to file an affidavit indicating whether the Opposite Party No.12 has vacated the encroached forest land or not.

11. Let the matter be listed on 4th September, 2023 at 2 pm for passing further orders.

12. A copy of this order be supplied to Mr. Debakanta Mohanty, learned AGA, free of cost forthwith."

(S. Talapatra)
Chief Justice

S. Behera

(Savitri Ratho)
Judge

9. It is not disputed that the said Writ Petition is still pending before the Hon'ble High Court of Orissa at Cuttack.
10. Ms. Sweksha Prakash, learned Counsel for the Applicant submitted that the Applicant in the present Original Application is also alleging environmental violations by the Respondent No.7, M/s JSW (ENERGY) IND-BARATH ENERGY (UTKAL) LIMITED and that the Respondent No.7 is causing extreme air pollution by emitting toxic gases, ash, silo and untreated smoke in the open air and is also draining trade effluents in the industrial water bodies including River Mahanadi and open agricultural fields leading to contamination of water bodies and causing toxicity to soil and ground water of the region and therefore, the matter would be admissible before this Tribunal.
11. We are not in agreement with the learned Counsel for the Applicant. The Applicant has sought direction to the Respondent No.7 and 8 to close down their industrial unit which is stated to be operating illegally on forest land and to demolish the illegal structure and machinery which is also the relief in the W.P.(C) No. 4167 of 2014 (*in the matter of Anchalika Jana Kalyan Anusthan vs. Union of India and others*) and therefore, this Original Application before this Tribunal on a particular issue relating to air pollution and water pollution is not maintainable.
12. The Hon'ble Supreme Court in Civil Appeal No.4522-4524 of 2022 (The State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru (M.P.)), has held that when an issue which is pending before the National Green Tribunal is already under consideration before the Hon'ble High Court, the continuation of the proceedings before the National Green Tribunal for the same cause of action

would not be in the interest of justice. Paragraph nos. 12, 13 and 14 of the judgment of the Hon'ble Supreme Court dated 01.06.2022 reads as under:-

***"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION***

**CIVIL APPEAL NO(S). 4522-4524 OF 2022
(@ DIARY NO. 16486/2022)**

THE STATE OF ANDHRA PRADESH

APPELLANT(S)

VERSUS

**RAGHU RAMAKRISHNA RAJU
KANUMURU (M.P.)**

RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

XXXXXXX

"12. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.

13. In that view of the matter, we are of the considered view that the continuation of the proceedings before the learned NGT for the same cause of action, which is seized with the High Court, would not be in the interest of justice.

14. *We, therefore, quash and set aside the proceedings pending before the learned NGT in O.A. No.361 of 2024.”*

13. In this view of the matter, the Original Application No.10/2025/EZ is dismissed as not maintainable.

14. I.As., if any, stand disposed of accordingly.

15. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

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

January 24, 2025,
Original Application No.10/2025/EZ
OM

NGT



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5348-5349 OF 2019**

**THE STATE OF HIMACHAL PRADESH
AND OTHERS**

...APPELLANT(S)

VERSUS

**YOGENDERA MOHAN SENGUPTA
AND ANOTHER**

...RESPONDENT(S)

WITH

TRANSFERRED CASE (C) NO. 2 OF 2023

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List of Abbreviations

1.	NGT	-	National Green Tribunal, Principal Bench, New Delhi
2.	First order of NGT	-	Order of NGT dated 16 th November 2017
3.	Second order of NGT	-	Order of NGT dated 14 th October 2022
4.	SPA	-	Shimla Planning Area
5.	CWP	-	Civil Writ Petition
6.	TCP Act	-	Himachal Pradesh Town & Country Planning Act, 1977
7.	1978 Rules	-	Himachal Pradesh Town & Country Planning Rules, 1978
8.	OA	-	Original Application
9.	FC Act	-	Forest (Conservation) Act, 1980
10.	NDMA	-	National Disaster Management Authority
11.	HPMC Act	-	Himachal Pradesh Municipal Corporation Act, 1994
12.	BPMC Act	-	Bombay Provincial Municipal Corporation Act, 1949
13.	MRTP Act	-	Maharashtra Regional and Town Planning Act, 1966
14.	AT Act	-	Administrative Tribunals Act, 1985

J U D G M E N T

B.R. GAVAI, J.

I. INTRODUCTION

Civil Appeal Nos. 5348-5349 OF 2019

1. These appeals challenge the judgment and order dated 16th November 2017 (hereinafter referred to as the “first order of NGT”) passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the “NGT”) in Original Application (OA) No. 121 of 2014, whereby various

directions were issued by the NGT, and the order dated 16th July 2018 passed by the NGT in Review Application No. 8 of 2018, whereby the review sought of the first order of NGT by the present appellants was dismissed.

Transferred Case (C) No. 2 of 2023

2. The draft development plan for 22,450 hectares of Shimla Planning Area (hereinafter referred to as “SPA”) which was finalized vide a notification dated 16th April 2022, came to be stayed by the NGT, vide an interim order dated 12th May 2022. By the said order, it restrained the appellants herein from taking any further steps in pursuance of the draft development plan of the SPA. The State of Himachal Pradesh and its instrumentalities-appellants herein preferred Civil Writ Petition (CWP) No. 5960 of 2022 titled ***State of Himachal Pradesh and another v. Yogendra Mohan Sengupta and Others*** before the High Court of Himachal Pradesh challenging the said interim order. Despite the pendency of the said writ petition, the NGT, vide its final order dated 14th October 2022 (hereinafter referred to as the “second order of NGT”) in OA No. 297 of 2022, held that the draft development plan, being in conflict with the first order of NGT, was illegal and cannot be

given effect to. Thereafter by an amendment in the said CWP No. 5960 of 2022, the second order of NGT also came to be challenged before the High Court of Himachal Pradesh. On 14th November 2022, this Court passed an order in Civil Appeal Nos. 5348-5349 of 2019 transferring the said CWP No. 5960 of 2022 from the High Court of Himachal Pradesh to itself, which came to be re-numbered as Transferred Case (C) No. 2 of 2023.

II. FACTS

Facts giving rise to filing of Civil Appeal Nos.5348-5349 of 2019:

3. Facts, in brief, giving rise to the filing of Civil Appeal Nos. 5348-5349 of 2019, are as follows:

3.1 The Himachal Pradesh Town & Country Planning Act, 1977 (hereinafter referred to as “TCP Act”) was enacted by the State of Himachal Pradesh in the year 1977. Vide Government Notification dated 30th November 1977, the SPA came to be constituted. The State of Himachal Pradesh, in exercise of powers conferred upon it by Section 87 of the TCP Act, enacted the Himachal Pradesh Town & Country Planning Rules, 1978 (hereinafter referred to as “1978 Rules”). The existing land-

use for SPA was notified by a notice dated 29th December 1977 and was adopted by another notice dated 14th March 1978.

3.2 The interim development plan for SPA was approved by a notification dated 24th March 1979 for the period 1979-2001. Vide notification dated 11th August 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), further amendments were carried out to the interim development plan for the SPA notified by the aforesaid notification dated 24th March 1979.

3.3 By another notification dated 7th December 2000 issued by the Department of Town & Country Planning (Government of Himachal Pradesh), in pursuance of the notification dated 11th August 2000, a survey of “Green Belt” within existing Core & restricted areas of the SPA was carried out and areas were declared as “Green Belt”.

3.4 A writ petition being CWP No. 4595 of 2011 titled ***Rajeev Varma and Others v. State of Himachal Pradesh and Others*** came to be filed in the year 2011 before the High Court of Himachal Pradesh. A direction was sought in the said writ petition to the State of Himachal Pradesh to prepare a

development plan for the SPA in accordance with the TCP Act within a time-bound schedule.

3.5 Respondent No.1 herein Yogendera Mohan Sengupta filed an OA (No. 121 of 2014) before the NGT, wherein he made the following prayers:

- (i) “Direct the State Government and the Respondent Nos. 3 and 4 to recognize the areas mentioned in notification dated 7.12.2000 as forest and any non-forest activity should not be allowed without prior permission under Section 2 of the Forest.
- (ii) Direct the State Government not to change the land use in any forests/green belt area as stated in clause d of notification dated 11.8.2000 to protect the ecology, environment and future of Shimla.
- (iii) Pass any other orders as the Hon’ble Tribunal may deem fit and proper in facts and circumstances of the case.”

3.6 The appellant-State of Himachal Pradesh (respondent in the said OA) filed a reply dated 23rd July 2014 before the NGT, wherein it specifically contended that the use of the words “Green Belt” does not include or bring the areas under forests and the “Green Belt” includes both forest and non-forest areas and that no permission for construction or any non-forestry activity would be allowed on forest land without approval under the Forest (Conservation) Act, 1980 (hereinafter referred to as the “FC Act”).

3.7 Despite the assurance given by the State Government, the NGT, *suo motu*, extended the scope of the application and vide an ad-interim order dated 30th May 2014 banned all types of construction activities in the Green Belt areas of Shimla covered under the notification dated 7th December 2000.

3.8 Thereafter, vide order dated 12th October 2015 in the said OA No. 121 of 2014, the NGT constituted a Committee comprising of officers from the National Disaster Management Authority (NDMA), a senior scientist from Wadia Institute of Himalayan Geology, Dehradun as nominated by the Director and other officials of the State and Central Governments for submitting its report on various aspects including water supply and the strength of carrying capacity of the hills.

3.9 Pursuant to the said order dated 12th October 2015 passed by the NGT, the Additional Chief Secretary, Department of Town & Country Planning (Government of Himachal Pradesh) issued a notification dated 6th November 2015 for the constitution of an Expert Committee. The Expert Committee submitted a report to the NGT on 29th August 2016. Along with an affidavit filed by the State of Himachal

Pradesh, the final report of the Expert Committee came to be submitted to the NGT on 20th May 2017.

3.10 Thereafter the first order of NGT came to be passed, whereby it issued various directions to the appellants herein and further banned all kinds of construction activities in core/forest/green areas in Shimla and further restricted the construction and re-construction activities in the entire SPA.

3.11 Some of the directions issued *vide* first order of NGT, *inter alia*, prohibited new construction of any kind, i.e. residential, institutional and commercial, in any part of the core and green/forest area and also directed that even in the other areas which fall within the SPA, construction would not be permitted beyond 2 storeys + attic floor. It further directed that, in case of unsafe and unfit residential structures in the core and green/forest areas, re-construction would only be allowed for residential purposes and that too, not beyond 2 storeys and an attic floor.

3.12 In direction No. VIII in the first order of NGT, it directed the State to finalise the development plan within three months from the date of the pronouncement of its first order. It also directed the said development plan to be notified in accordance

with law and directed to take into consideration the directions and precautions as suggested in the first order of NGT while finalizing the development plan.

3.13 The NGT also constituted an Implementation Committee and a Supervisory Committee entrusted with the responsibility for carrying out the specific directions given under the first order of NGT and to provide NOCs or necessary permissions to the stakeholders, whether State or private parties.

3.14 The appellants thereafter filed a Review Application No. 8 of 2018 seeking review of the first order of NGT. However, the same was dismissed vide order dated 16th July 2018. Being aggrieved thereby, Civil Appeal Nos.5348-5349 of 2019 have been filed before this Court.

Facts giving rise to filing of Transferred Case (C) No.2 of 2023:

4. In pursuance of the directions issued vide first order of NGT and in exercise of the powers conferred upon it under the TCP Act and the 1978 Rules framed thereunder, the State of Himachal Pradesh published a draft development plan on 8th February 2022. It is to be noted that various directions were also issued by the High Court of Himachal Pradesh from time

to time in CWP No. 4595 of 2011 for finalization of the development plan in accordance with the TCP Act. The State of Himachal Pradesh also invited objections and suggestions from the general public in relation to the draft development plan. In all, 97 objections/suggestions were received by the State of Himachal Pradesh within stipulated time-period and the same were heard by the Director in due course. CWP Nos. 23 and 37 of 2022 were also filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

4.1 In the meantime, respondent No.1 herein-Yogendera Mohan Sengupta filed another OA (No. 297 of 2022) before the NGT in relation to the draft development plan. The NGT, vide interim order dated 12th May 2022, stayed the draft development plan and restrained the State of Himachal Pradesh from taking any further steps in pursuance of the draft development plan. Being aggrieved thereby, the State of Himachal Pradesh filed CWP No. 5960 of 2022 under Article 226/227 of the Constitution of India before the High Court of Himachal Pradesh. Despite the pendency of the said CWP No. 5960 of 2022, the NGT, vide its second order, held that the

draft development plan, being in conflict with the first order of NGT, is illegal and cannot be given effect to. The appellants herein filed an application in CWP No. 5960 of 2022, before the High Court of Himachal Pradesh, praying for amending the writ petition so as to challenge the second order of NGT. Since common issues were being considered by this Court in Civil Appeal Nos.5348-5349 of 2019, this Court vide an order dated 14th November 2022, directed the transfer of the said CWP No. 5960 of 2022 before itself.

III. SUBMISSIONS

5. We have heard Shri Anup Rattan, learned Advocate General appearing on behalf of the State of Himachal Pradesh, Shri Vinay Kuthalia, learned Senior Counsel appearing on behalf of the Shimla Municipal Corporation and Shri Sanjay Parikh, learned Senior Counsel appearing on behalf of the common respondent No.1 in Civil Appeal Nos.5348-5349 of 2019 and Transferred Case (Civil) No.2 of 2023..

Submissions on behalf of the Appellants:

6. It is submitted on behalf of the appellants that the State was fully aware of its duties and responsibilities as envisaged by the Constitution of India as well as the relevant statutory

provisions. It is submitted that while finalizing the development plan, the State has adopted a proactive role to ensure that a balance is struck between the developmental and environmental issues.

7. It is submitted on behalf of the appellants that the development plan has been finalized in exercise of statutory powers vested in the appellants under Sections 13 to 20 of the TCP Act, after considering all the recommendations and suggestions of various expert bodies and technical committees as well as the directions and recommendations of the NGT.

8. It is submitted on behalf of the appellants that a bare perusal of Chapters 12 and 17 of the development plan would go to show that the entire environmental aspects as well as the suggestions and directions of the NGT issued vide first order of NGT have been fully and duly considered before finalizing the development plan.

9. It is submitted on behalf of the appellants that while taking steps to finalise the development plan, the appellants have attempted to balance the developmental requirements for catering to the needs of the expanding population, with the safeguards to preserve and protect the environment. It is

submitted that while finalizing the development plan, the entire procedure as prescribed under the Statutes was duly followed.

10. The learned Advocate General as well as Shri Kuthalia submitted that the planning regulations divide the areas into different categories. It is submitted that, in order to protect the environment, various stringent provisions have been made such as:

- (i) “In the core area, only 2 storeys + attic is permitted and parking floor is permitted only in those plots which are accessible by motorable road;
- (ii) In the non-core area and the Planning Area, only 3 storeys + attic is permitted and parking floor is only permitted in plots which are adjacent to motorable roads; and
- (iii) Rebuilding and reconstruction of old buildings has been permitted strictly on old lines. With the efflux of time in many buildings, there are different owners of each floor;
- (iv) In green belt areas which are lying between constructed areas, only single storey construction with attic is permissible. However, no tree will be permitted to be felled in any such area and no

construction will be permitted in forest area without following the mandate of the Forest Conservation Act.”

11. It is further submitted on behalf of the appellants that appropriate setbacks have also been made mandatory in order to avoid overcrowding. It is submitted that because of the peculiar climate of Shimla, the attic is necessary because the roof is required to be sloping in hilly terrain, to allow for run-off of rain and snow. It is further submitted that construction will only be permitted after a soil investigation report of the area and assessment of structural stability by an expert are made. The construction is required to be approved by a qualified architect or engineer.

12. The first and second orders of NGT are also challenged by the appellants on the ground that the jurisdiction of NGT is limited to the civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 (hereinafter referred to as the “NGT Act”). It is submitted that Schedule I of the NGT Act does not include town and country

planning and as such, the orders passed by the NGT are without jurisdiction.

13. It is further submitted on behalf of the appellants that the exercise of power for finalising the development plan is a quasi-legislative power and the NGT could not have issued directions to exercise that power in a particular manner. It is submitted that the said would amount to encroachment upon the statutory functions of the State which are entrusted to it by virtue of the TCP Act.

14. It is also submitted on behalf of the appellants that the NGT could not have *suo motu* enlarged the scope of OA No. 121 of 2014 as it is a body constituted under a statute and it has to exercise its jurisdiction within the four corners of the statute.

15. It is submitted on behalf of the appellants that various directions issued by the NGT are contrary to the provisions of the TCP Act, Himachal Pradesh Municipal Corporation Act, 1994 (for short, “HPMC Act”) and the various Bye-laws, Rules and Notifications framed thereunder and as such, not sustainable in law. A reliance in this respect is placed on the following judgments of this Court:

Himachal Pradesh Bus Stand Management and Development Authority (H.P. BSM & DA) v. Central Empowered Committee and Others¹, State of Madhya Pradesh v. Centre for Environment Protection Research and Development and Others², Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch and Others³, Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Limited and Others⁴ and Techhi Tagi Tara v. Rajendra Singh Bhandari and Others⁵.

16. It is submitted that since the development plan was prepared by the State in exercise of its constitutional powers under Article 162 of the Constitution of India and statutory powers under the TCP Act and HPMC Act, the NGT could not have issued directions to act in a manner which would be contrary to those provisions. Reliance in this respect is placed on the following judgments of this Court:

¹ (2021) 4 SCC 309 : 2021 INSC 18

² (2020) 9 SCC 781 : 2020 INSC 516

³ (2021) 11 SCC 566 : 2020 INSC 452

⁴ (2019) 19 SCC 479 : 2019 INSC 220

⁵ (2018) 11 SCC 734 : 2017 INSC 986

***State of Himachal Pradesh and Others v. Satpal Saini*⁶,
*Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College,
 Meerut and Others*⁷ and *Bishambhar Dayal Chandra
 Mohan and Others v. State of Uttar Pradesh and Others*⁸.**

17. The learned Advocate General further submitted that the directions issued by the NGT, rather than subserving any public interest are contrary to the public interest inasmuch as vast number of citizens are being put to great hardships and inconvenience. It is submitted that on account of the directions issued by the NGT, re-construction of the old structures which are in dilapidated condition and which is permissible on the existing plinth area, has been brought to a complete halt.

18. The learned Advocate General further submitted that the State is alive to the requirement of protecting environment and as such, the Cabinet has taken a decision wherein it prescribed more stringent measures.

19. Both the orders of NGT are also challenged on the ground that when the High Court was seized of the matter with regard

⁶ (2017) 11 SCC 42

⁷ 1986 Supp SCC 543 : 1986 INSC 275

⁸ (1982) 1 SCC 39 : 1981 INSC 189

to the draft development plan, the NGT could not have entertained the proceedings and passed the orders therein. Reliance in this respect is placed on the judgment of this Court in the case of ***State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (Member of Parliament)***⁹.

Submissions on behalf of the Respondents:

20. Shri Parikh, on the contrary, submitted that the first order of NGT threw light on the serious concerns regarding the fragile ecology of State of Himachal Pradesh in general and Shimla in particular. The first order of NGT has also tried to address issues with regard to continuous instances of landslides and collapsing of buildings, cloud bursts and earthquakes.

21. Shri Parikh further submitted that the first order of NGT is based on the report presented by the High Powered Committee appointed by it. The NGT has considered in detail the report of the High Powered Committee, various other documents and government records. After consideration of the same, directions have been given in order to ensure the

⁹ (2022) 8 SCC 156 : 2022 INSC 632

protection of ecology and environment. It is submitted that the development plan is finalized keeping in view the directions issued by the NGT with regard to core areas, green areas, sinking areas and heritage areas.

22. It is submitted on behalf of the respondents that the NGT has rightly issued the directions to re-construct in core area or green/forest area within legally permissible statutory limits of the old buildings and in any case not beyond 2 storeys and an attic floor. It is submitted that further direction was that if any construction, particularly public utilities like hospitals, schools, offices are proposed to be constructed beyond 2 storeys plus an attic floor, then the plan has to be duly approved and permission has to be obtained from the concerned authorities.

23. Shri Parikh submitted that the “Green Belt” areas, by notification dated 7th December 2000, are covered under the dictionary meaning of ‘forest’ and are thus required to be protected under the provisions of the FC Act as per the order

of this Court passed in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Others***¹⁰.

24. Shri Parikh submitted that the challenge to the second order of NGT is also without substance inasmuch as the directions issued by the NGT, vide its first order, were binding upon the appellants and the draft development plan could not have been notified in contravention of the directions of the NGT. A reliance in this respect is placed on the judgment of this Court in the case of ***Punjab Termination of Agreement Act, 2004, In Re, Special Reference No. 1 of 2004***¹¹. Reliance is also placed on the judgment of this court in the case of ***State of Tamil Nadu v. State of Kerala and Another***¹².

25. Shri Parikh further submitted that this Court in the case of ***Mantri Techzone Private Limited v. Forward Foundation and Others***¹³ has held that the NGT has overriding powers over anything inconsistent contained in any other law or in any instrument having effect by virtue of any

¹⁰ (1997) 2 SCC 267 : 1997 INSC 226

¹¹ (2017) 1 SCC 121 : 2016 INSC 1018

¹² (2014) 12 SCC 696 : 2014 INSC 373

¹³ (2019) 18 SCC 494 : 2019 INSC 315

law. He further submitted that this Court has held that while providing for restoration of environment in an area, the NGT can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or Revised Master Plan.

26. Shri Parikh relies on the judgments of this Court in the cases of *Pragnesh Shah v. Dr. Arun Kumar Sharma and Others*¹⁴, *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Others*¹⁵ and *Resident's Welfare Association and Another v. Union Territory of Chandigarh and Others*¹⁶ in support of the proposition that the NGT has jurisdiction to issue directions in order to protect the ecologically sensitive areas.

27. It is submitted that the jurisdiction of this Court under Section 22 of the NGT Act is very limited and an interference is warranted only when the court finds that there is an error apparent on the face of record in the findings of the NGT.

28. It is submitted that if the directions issued by the NGT, which provide for a precautionary approach, are not followed

¹⁴ (2022) 11 SCC 493 : 2022 INSC 47

¹⁵ (1997) 11 SCC 605

¹⁶ (2023) 8 SCC 643 : 2023 INSC 22

and the construction activities as provided in the development plan are carried out, it will be disastrous for future generations and will result in calamities like frequent landslides due to floods and earthquakes, cloudbursts and other natural disasters resulting in loss to the human lives and property. It is therefore submitted that the present appeals as well as the transferred case arising out of the writ petitions pending before the High Court are liable to be dismissed.

Submissions on behalf of the Interveners/Land Owners:

29. It was argued on behalf of the interveners who were owners of the plots in “Green Belt” areas that on account of the restrictions imposed in the “Green Belt” areas, they were deprived of enjoyment of their property which would be violative of Article 300A of the Constitution of India. It was therefore submitted that a direction be given to the State to pay compensation to such owners for not being in a position to utilize their plot of lands. We *prima facie* find that such an issue could be beyond the scope of the present proceedings.

IV. CONSIDERATION:

A. Legislative Scheme of the TCP Act.

30. It will be apposite to refer to the Preamble of the TCP Act, which reads thus:

“An act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective to constitute the Town and Country Development Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through the Special Area Development Authority*, to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid.”

31. It can thus be seen that the TCP Act has been enacted to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective. It also provides for constitution of Town and Country Development Authority for proper

* As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2015 (Act 14 of 2015).

implementation of town and country development plan. It also provides for development and administration of special areas through the Special Area Development Authority.

32. Section 13 of the TCP Act reads thus:

“13. Planning Area.—(1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof.

(2) The State Government may, by notification,-

(a) alter the limits of a planning area so as to include therein or exclude there from such area as may be specified in the notification;

(b) amalgamate two or more planning areas so as to constitute one planning area;

(c) divide any planning area into two or more planning areas;

(d) declare that the whole or part of the area constituting the planning area shall cease to be planning area or part thereof.”

33. It can thus be seen that under Section 13 of the TCP Act, the State Government is empowered to constitute planning areas for the purposes of the Act and define the limits thereof. It is also empowered to alter the limits of a planning area, amalgamate two or more planning areas and also to divide any planning area into two or more planning areas.

34. Section 14 of the TCP Act reads thus:

“14. Director to prepare Development Plans.—

Subject to the provisions of this Act and the rules made thereunder the Director shall—

*(a) prepare an existing land use map indicating the natural hazard proneness of the area;

*(b) prepare an interim development plan keeping in view the regulation for land use zoning for natural hazard prone area;

*(c) prepare a development plan keeping in view the regulation for land use zoning for natural hazard prone area;

(d) prepare a sectoral plan;

(e) carry such surveys and inspections and obtain such pertinent reports from Government departments, local authorities and public institutions as may be necessary for the preparation of the plans;

(f) perform such duties and functions as are supplemental, incidental, and consequential to any of the foregoing functions or as may be assigned by the State Government for the purpose of carrying out the provisions of this Act.”

35. Clauses (a), (b) and (c) of Section 14 of the TCP Act have been amended vide Himachal Pradesh Town and Country

* As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).

Planning (Amendment) Act 2013 (Act No. 41 of 2013). It can be seen that these clauses provide a special emphasis on the areas indicating the natural hazard.

36. Section 15 of the TCP Act reads thus:

“15. Existing Land use Maps.—(1) The Director shall carry out the survey and prepare an existing land use map and forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map and of the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice.

(2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, make such modification therein as may be considered desirable.

(3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places where the copies of the same may be inspected.

(4) A copy of the notice shall also be published in the Official Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted.”

37. Under Section 15 of the TCP Act, the Director is required to carry out the survey and prepare an existing land use map

and, forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map. It also provides for inviting objections and suggestions in writing from any person with respect thereto within thirty days from the date of publication of such notice. Sub-section (2) of Section 15 thereof provides for allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions. It also enables the Director to make such modification therein as may be considered desirable. Sub-section (3) thereof provides that after the map is adopted with or without modifications, the Director shall publish a public notice of the adoption of the map. A copy of the notice is required to be published in the Official Gazette.

38. Section 15-A of the TCP Act deals with “Freezing of landuse pending preparation of existing landuse map under Section 15(1)”. Section 16 of the TCP Act deals with “Freezing of land use on the publication of the existing land use map under Section 15”. Section 17(1) of the TCP Act deals with “Interim Development Plans”.

39. The provisions of Sections 18, 19 and 20 of the TCP Act are most relevant for considering the issues involved in the present matter, which read thus:

“18. Development Plan.—A development plan shall—

(a) indicate broadly the land use proposed in the planning areas;

(b) allocate broadly areas or sector of land for,—

(i) residential, industrial, commercial or agricultural purposes,

(ii) open spaces, parks and gardens, green belts, zoological gardens and play grounds,

(iii) public institutions and offices,

(iv) such special purposes as the Director may deem fit;

(c) lay down the pattern of National and State highways connecting the planning area with the rest of the region ring roads, arterial roads, and the major roads within the planning area;

(d) provide for the location of airports, railway stations, bus terminal and indicate the proposed extension and development of railways;

(e) make proposals for general landscaping and preservation of natural areas;

(f) project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment;

(g) propose broad based regulations for sectoral development, by way of guideline, within each sector of the location, height,

size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put *including regulations for façade control and sloping roof conforming to the hill architecture and environs”;

(h) lay down the broad based traffic circulation patterns in a city;

(f) suggest architectural control features, elevation and frontage of buildings and structures;

(j) indicate measures for flood control, *and protection against land slide”, prevention of air and water pollution, disposal of garbage and general environmental control.

19. Publication of Draft Development Plan.—(1)

The Director shall forthwith publish the draft development plans prepared under section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected, inviting objections and the suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice. Such notice shall specify in regard to the draft development plan the following particulars, namely:—

(i) the existing land use maps;

(ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

(iii) the phasing of implementation of the draft development plan as suggested by the Director;

(iv) the provisions for enforcing the draft development plan and stating the manner

* As amended vide Himachal Pradesh Town and Country Planning (Amendment) Act 2013 (Act No. 41 of 2013).

in which permission to development may be obtained;

(v) an approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The Director shall, not later than ninety days after the date of expiry of the notice period under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, make such modifications in the draft development plan as he may consider necessary, and submit not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

20. Sanction of Development Plan.—(1) As soon as may be after the submission of the development plan under Section 19, the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Official Gazette invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard the State Government may confirm the modification in the development plan.

(4) The State Government shall publish the development plan as approved, under the foregoing

provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area.

(6) After the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan.”

40. It can thus be seen that the development plan is required to consist of various factors. Clause (b) of Section 18 of the TCP Act provides that it shall allocate broadly areas or sector of land for various purposes including residential, industrial, commercial or agricultural. It shall also provide for open spaces, parks and gardens, green belts, zoological gardens and play-grounds. It is also required to make proposals for general landscaping and preservation of natural areas. It is required to project the requirement of the planning area of such amenities and utilities as water, drainage, electricity and suggest their fulfilment. It is also required to propose broad-based regulations for sectoral development, by way of guide-

lines, within each sector of the location, height, size of buildings and structures, open spaces, court-yards and the use to which such buildings and structures and land may be put including regulations for façade control and sloping roof conforming to the hill architecture and environs.

41. It can thus be seen that a special emphasis is placed on regulations for façade control and sloping roof conforming to the hill architecture and environs. Clause (j) of Section 18 of the TCP Act, also specifically provides to indicate measures for flood control, protection against land slide, prevention of air and water pollution, disposal of garbage and general environmental control.

42. Under Section 19(1) of the TCP Act, the Director is required to publish the draft development plan prepared under Section 18 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected. It provides for inviting objections and suggestions, in writing, from any person with respect thereto, within thirty days from the date of publication of such notice. The notice to be issued under Section 19 requires that it should specify the existing

land use maps, a narrative report supported by maps and charts, explaining the provisions of the draft development plan, the phasing of implementation of the draft development plan as suggested by the Director, the provisions for enforcing the draft development plan and stating the manner in which permission to development may be obtained and the approximate estimate of the cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

43. Under sub-section (2) of Section 19 of the TCP Act, the Director is required to consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) thereof, not later than ninety days after the date of expiry of the notice period. He is also required to give reasonable opportunity to all persons affected thereby of being heard and make such modifications in the draft development plan as he may consider necessary. He is also required to submit, not later than six months after the publication of the draft development plan, the plan so modified, to the State Government for approval together with all connected documents, plans, maps and charts.

44. Under Section 20 of the TCP Act, after the development plan under Section 19 is submitted to the State Government, it may either approve the development plan or it may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Under sub-section (2) thereof, where the State Government approves the development plan with modifications, the State Government shall, by a notice, published in the Official Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Official Gazette. Under sub-section (3) thereof, after considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan. Sub-section (4) thereof requires the State Government to publish the development plan as approved, under the foregoing provisions in the Official Gazette and shall along with the plan publish a public notice, in such manner as may be prescribed, of the approval of the development plan and the

place or places where the copies of the approved development plan may be inspected. Sub-section (5) thereof provides that the development plan shall come into force from the date of publication thereof in the Official Gazette and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning within the planning area. Sub-section (6) thereof provides that after the coming into operation of the development plan, the interim development plan shall stand modified or altered to the extent the proposals in the development plan are at variance with the interim development plan.

B. Nature of functions/powers of the Authorities under Chapter-IV of the TCP Act.

45. A perusal of the aforesaid provisions, leaves no manner of doubt, that Chapter-IV of the TCP Act is a complete code, providing for preparation of draft development plan, publication of draft development plan with a publication of its notice, inviting objections and suggestions, giving reasonable opportunity to all persons affected of being heard, making modifications in the draft development plan as may be

considered necessary by the Director and thereafter submitting it to the State Government.

46. Under Section 20 of the TCP Act, the State Government is empowered to either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as it may issue in this behalf. Sub-section (2) thereof provides that where the State Government approves the development plan with modifications, it is again required to be published in the Official Gazette to invite objections and suggestions in respect of such modifications. The State Government is empowered to confirm the modification in the development plan after considering objections and suggestions and after giving a hearing to the persons desirous of being heard.

47. It could thus be seen that Chapter-IV of the TCP Act provides for inviting objections and suggestions at two stages. Firstly, at the stage of Section 19 where the Director is required to invite objections and suggestions to the draft development plan and after giving an opportunity of being heard and considering the objections and suggestions, submit

the development plan to the State Government. Under Section 20 of the TCP Act, a second opportunity of making objections and suggestions has been provided. Again, the State Government is required to give an opportunity of hearing to such objectors before granting final approval to the development plan.

48. A perusal of the scheme of the TCP Act and particularly Chapter-IV thereof would establish beyond doubt that the powers vested with the Director and the State Government are for enacting a piece of delegated legislation.

49. The distinction between the legislative function and administrative function is succinctly described by this Court in the case of ***Union of India and Another v. Cynamide India Ltd. and Another***¹⁷, which reads thus:

“7. The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it

¹⁷ (1987) 2 SCC 720 : 1987 INSC 100

has been said, is “difficult in theory and impossible in practice”. Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as “one between the general and the particular”. “A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”. “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.” It has also been said: “Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class” while, “an adjudication, on the other hand, applies to specific individuals or situations”. But, this is only a broad distinction, not necessarily always true.”

50. Though, this Court, in the celebrated case of **Cynamide India Ltd.** (supra) observed that any attempt to draw a distinct line between legislative and administrative functions is difficult in theory and impossible in practice, it attempted to draw a line between the two inasmuch as different legal rights and consequences may ensue, in exercise of such functions. It has been held that the distinction between the two has usually been expressed as “one between the general and the

particular”. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; whereas an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. It has been held that legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future. Whereas, administration is the process of performing particular acts of issuing particular orders or of making decisions which apply general rules to particular cases. It has also been held that rule-making is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class; whereas an adjudication, on the other hand, applies to specific individuals or situations.

51. When we apply the aforesaid principles to the facts of the present case, it will be amply clear that the preparation of draft development plan under Section 18 of the TCP Act, finalization of the same under Section 19 of the TCP Act by the Director and grant of approval by the State under Section 20 of the TCP Act are all legislative functions. The provisions enable the

delegated legislative body to formulate the provisions which will have a general application to all members of the broadly identifiable classes.

52. In the case of ***Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur***¹⁸, again a challenge was made to the notification issued under Section 3 of the U.P. Town Areas Act, 1914 on the ground that before issuance of final notification, the principles of *audi alteram partem* were not followed. While rejecting the said contention and holding the exercise of powers as a piece of conditional legislation, this Court observed thus:

“7. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S.A. De Smith in *Judicial Review of Administrative Action* (3rd Edn.) observes at p. 163:

“However, the analytical classification of a function may be a conclusive factor in excluding the operation of the *audi alteram partem* rule. It is generally assumed that in English law the making of a subordinate legislative instrument

¹⁸ (1980) 2 SCC 295 : 1980 INSC 38

need not be preceded by notice or hearing unless the parent Act so provides.”

.....

9. We are, therefore, of the view that the maxim “audi alteram partem” does not become applicable to the case by necessary implication.”

53. It is thus clear that this Court held that a declaration under Section 3 of the U.P. Town Areas Act, 1914 provided for enabling the application of the rest of the provisions of the Act to the geographical area which is declared as a town area. It was thus held that the declaration made under Section 3 was legislative in character.

54. In the case of ***Sundarjas Kanyalal Bhatija and Others v. Collector, Thane, Maharashtra and Others***¹⁹, the Government of Maharashtra had issued a draft notification under Section 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 (for short, “BPMC Act”). The draft notification proposed for formation of “Kalyan Corporation”. Against the said proposal, there were many objections and representations received from different sections. In the earlier draft notification, the area of Ulhasnagar Municipal Council

¹⁹ (1989) 3 SCC 396 : 1989 INSC 202

was proposed to be merged in the proposed area of Kalyan Corporation. However, taking into consideration the objections, the area of Ulhasnagar Municipal Council was excluded from the area of Kalyan Corporation while issuing the final notification. The same was challenged before the High Court by filing a writ petition. One of the reasons which weighed with the High Court while allowing the petition was that the opportunity of hearing was not given to one of the parties while issuing the final notification under Section 3(2) of the BPMC Act. It will be relevant to refer to the following observations of this Court while reversing the order of the High Court in the said case:

“28. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law.”

55. It could thus be seen that this Court clearly held that the issuance of draft notification, consideration of objections and

publication of final notification are done in exercise of legislative powers. The procedural requirement of hearing would not be implied unless the statute so provides for.

56. This Court, in the case of ***Pune Municipal Corporation and Another v. Promoters and Builders Association and Another***²⁰, had an occasion to consider somewhat similar provisions under the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”). In the said case, this Court was considering the power of the State Government to make any changes of its own in the modifications submitted by the Planning Authority under Section 37 of the MRTP Act. This Court observed thus:

“**5.** Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature

²⁰ (2004) 10 SCC 796 : 2004 INSC 348

has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for “such inquiry as it may consider necessary” by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (*Union of India v. Cynamide India Ltd.* [(1987) 2 SCC 720] , SCC paras 5 and 27. See generally *H.S.S.K. Niyami v. Union of India* [(1990) 4 SCC 516] and *Canara Bank v. Debasis Das* [(2003) 4 SCC 557 : 2003 SCC (L&S) 507] .) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally *ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat* [1990 Supp SCC 397] .) Therefore, the view adopted by the High Court does not appear to be correct.”

57. It could thus be seen that this Court in the case of ***Pune Municipal Corporation*** (supra) held that making of Development Control Rules (DCR) or amendments thereof are legislative functions.

58. In the said case, the Court also found that since the legislature did not provide for a public hearing before according sanction, the delegated legislation could not be questioned for violating the principles of natural justice in its making except when the statute itself provide for that requirement. The Court went on to hold that where the

legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity.

59. Again, in the case of ***Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited and Others***²¹, the scheme for finalization of the development plan as provided under the Karnataka Town and Country Planning Act, 1961 was considered and the said power was held to be in exercise of the legislative powers.

60. Recently, a three-Judges Bench of this Court in the case of ***Rajeev Suri v. Delhi Development Authority and Others***²², after considering the earlier judgments, held that the change of use of government land which is of general nature would be a function which has a quasi-legislative hue to it.

61. It can thus be seen that it is a settled position of law that the exercise of power for the preparation, finalization and approval of development plan is a power exercised by the delegatee for enacting a subordinate piece of legislation. We

²¹ (2012) 3 SCC 442 : 2012 INSC 50

²² (2022) 11 SCC 1: 2021 INSC 4

therefore have no manner of doubt in holding that the aforesaid provisions as contained in the TCP Act provide for exercise of power by a delegatee to enact a piece of subordinate legislation.

C. Whether the NGT could have issued directions to the legislative body to exercise its legislative functions in a particular manner?

62. A perusal of the first order of NGT would reveal that the NGT, in effect, has issued directions to the authority empowered to enact the development plan, to do so in a particular manner. The question therefore that will have to be considered is as to whether the NGT could have exercised its jurisdiction in such a manner, to issue such directions.

63. In the case of ***V.K. Naswa v. Home Secretary, Union of India and Others***²³, the petitioner-in-person had approached this Court to issue directions to the Central Government, through the Ministry of Law & Justice, to amend the law for taking action against a person for showing any kind of disrespect to the national flag or for not observing the terms contained in the Flag Code of India, 2002. In the alternative,

²³ (2012) 2 SCC 542 : 2012 INSC 10

it was prayed by the petitioner-in-person that this Court may be pleased to issue direction(s) in that regard.

64. This Court, in the said case, after surveying various earlier judgments on the issue, observed thus:

“6. It is a settled legal proposition that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner.

7. In *Mallikarjuna Rao v. State of A.P.* [(1990) 2 SCC 707 : 1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and *V.K. Sood v. Deptt. of Civil Aviation* [1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285] , this Court has held that the writ court, in exercise of its power under Article 226, has no power even indirectly to require the executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. **The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution.** While deciding the said case, the Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj v. UT, H.P.* [(1971) 2 SCC 747 : AIR 1971 SC 2399] , where it has been held that **legislative power can be exercised only by the legislature or its delegate and none else.**

8. In *State of H.P. v. Parent of a Student of Medical College* [(1985) 3 SCC 169 : AIR 1985 SC 910] , this Court deprecated the practice adopted by the courts to issue directions to the legislature to enact a legislation to meet a particular situation observing : (SCC p. 174, para 4)

“4. ... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation.”

9. In *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] this Court while dealing with a case like this at hand observed : (SCC p. 374, para 19)

“19. ... While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. *The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive.*”

10. In *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S)

248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , this Court similarly observed : (SCC p. 332, para 14)

“14. ... It is not the duty of the court either to enlarge the scope of the legislation.... The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts.”

11. Similarly in *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : AIR 1999 SC 1351] , this Court held that the court cannot fix a period of limitation, if not fixed by the legislature, as “the courts can admittedly interpret the law and do not make laws”. The court cannot interpret the statutory provision in such a manner “which would amount to legislation intentionally left over by the legislature”.

12. A similar view has been reiterated by this Court in *Union of India v. Assn. for Democratic Reforms* [(2002) 5 SCC 294 : AIR 2002 SC 2112] observing that the court cannot issue direction to the legislature for amending the Act or Rules. It is for Parliament to amend the Act or Rules. In *District Mining Officer v. TISCO* [(2001) 7 SCC 358] , this Court held that function of the court is only to expound the law and not to legislate.

13. Similarly, in *Supreme Court Employees' Welfare Assn. v. Union of India* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] , this Court held that the court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme Parliament exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation. (See also *State of J&K v. A.R. Zakki* [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285 : AIR 1992 SC 1546] .)

14. In *Union of India v. Prakash P. Hinduja* [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314 : AIR 2003 SC 2612]

, this Court held that if the court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the contempt of court for the reason that the order passed by the court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

15. The issue involved herein was considered by this Court in *University of Kerala v. Council of Principals of Colleges* [(2010) 1 SCC 353 : AIR 2010 SC 2532] . The Court elaborately explained the scope of separation of powers of different organs of the State under our Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed : (SCC p. 361, para 13)

“13. ... ‘19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the rules.’ [Ed. : As observed in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294, p. 309, para 19.] ”

16. In *State of U.P. v. Jeet S. Bisht* [(2007) 6 SCC 586] , this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.

17. In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* [(2011) 8 SCC 568 : (2011) 2 SCC (L&S) 375] , this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. (See also *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241

: 1997 SCC (Cri) 932 : AIR 1997 SC 3011] ; *Common Cause v. Union of India* [(2008) 5 SCC 511 : AIR 2008 SC 2116] and *Destruction of Public and Private Properties v. State of A.P.* [(2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : AIR 2009 SC 2266])

18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. **Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.”**

[emphasis supplied by us]

65. Constitution of India recognizes the independence and separation of powers amongst the three branches of the State viz. the Legislature, the Executive and the Judiciary. Each of the branches are co-equal. The Parliament or the Legislature is entrusted with the function of legislation, i.e., enacting the laws. The Executive is entrusted with the function and power to implement those laws and discharge their functions in accordance with the provisions made in the Constitution of India and the laws so enacted. The Judiciary is entrusted with the function to ensure that the laws enacted by the Legislature are within the four corners of the Constitution of India and that the Executive acts within the four corners of the Constitution of India and the laws enacted by the Legislature. As to what should be the laws and the policy behind the said laws is clearly within the domain of the Legislature. It is a

different matter for Judiciary to examine as to whether a particular piece of legislation stands the scrutiny of law within the limited grounds of judicial review available. However, giving a direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive or the Legislature would neither be legal nor proper. The Court cannot be permitted to usurp the functions assigned to the Executive, the Legislature or the subordinate legislature. The Court cannot also assume a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution of India.

66. It is a settled law that the Constitution of India does not permit the courts to direct or advise the Executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive. It is also settled that the courts cannot issue directions to the Legislature for enacting the laws in a particular manner or for amending the Acts or the Rules. It is for the Legislature to do so.

67. A Constitution Bench, in the case of ***Manoj Narula v. Union of India***²⁴, was considering various questions. One of the questions that has been considered was whether by taking recourse to the doctrine of advancing constitutional culture, could a court read a disqualification to the already expressed disqualifications either provided under the Constitution or under the Representation of People Act, 1951. Answering the question in the negative, the Court observed thus:

“**67.** The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review.”

68. This Court, in the case of ***Satpal Saini*** (supra), considered whether it was permissible for the High Court to call upon the State Government to amend the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The directions were issued by the High Court to the State Government to make amendment within 90

²⁴ (2014) 9 SCC 1 : 2014 INSC 568

days. Allowing the appeal filed by the State Government, this Court held that the High Court, while issuing the above directions, acted in a manner contrary to the settled limitations on the power of judicial review under Article 226 of the Constitution of India. It held that the directions cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in the Parliament and the State Legislatures.

69. It can thus be seen that it is a settled position of law that neither the High Courts while exercising powers under Article 226 of the Constitution nor this Court while exercising powers under Article 32 of the Constitution can direct the legislature or its delegatee to enact a law or subordinate legislation in a particular manner. If the High Courts and this Court, in their extra-ordinary powers under Articles 226 and 32 of the Constitution cannot do so, the answer to the question as to whether a Tribunal constituted under a statute, having a limited jurisdiction, can do so or not, would be obviously 'No'.

70. In that view of the matter, we find that the first order of NGT is liable to be set aside on the short ground that it has transgressed its limitations and attempted to encroach upon

the field reserved for the delegatee to enact a piece of delegated legislation. We are of the considered view that when the TCP Act empowers the State Government and the Director to exercise the powers to enact a piece of delegated legislation, the NGT could not have imposed fetters on such powers and directed it to exercise its powers in a particular manner.

D. Whether observations in Para 47 of the *Mantri Techzone Private Limited (supra)* would operate as *res judicata*?

71. A reliance in this respect is placed by respondent No.1 on the judgment of this Court in the case of ***Mantri Techzone Private Limited*** (supra). It will be relevant to refer to the arguments advanced by the State Government and the other private parties in the said case, which read thus:

“27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation.

Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.”

72. It will be relevant to refer to the contention made by the counsel appearing on behalf of the applicants in the said case, which reads thus:

“**29.** On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016 [*Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409] except the directions issued against Respondents 9 and 10. In view of the above, it is not

necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.”

73. It could thus be seen that this Court has specifically recorded the submissions made by the counsel that he has no objection if this Court sets aside the general conditions and directions of NGT in para 1 of the order dated 4th May 2016 in the case of **Forward Foundation v. State of Karnataka**²⁵, except the directions issued against Respondents 9 and 10. It could thus be seen that this Court, in view of the submissions recorded on behalf of the counsel for the applicants, did not find it necessary to consider the contentions urged in the other civil appeals except the appeals filed against Respondents 9 and 10. As such, the observations made in para 47 of **Mantri Techzone Private Limited** (supra) will have to be construed as restricted to the cases of respondent Nos. 9 and 10. The position is further clarified from the observations of this Court in the said case in paras 60-61.

²⁵ 2016 SCC OnLine NGT 1409

74. As to what could be a binding precedent has been succinctly observed by this Court in the case of ***Union of India and Others v. Dhanwanti Devi and Others***²⁶, which reads as under:

“9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone

²⁶ (1996) 6 SCC 44 : 1996 INSC 911

is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.”

75. This Court, in the case of ***Dhanwanti Devi*** (supra) in paragraph 9, has held that it is not profitable to extract a sentence here and there from the judgment and to build upon it. It has been held that the essence of the decision is its ratio and not every observation found therein. It has been held that a deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue would constitute a precedent.

76. Though at a first blush, the observations made in para 47 of the judgment in the case of ***Mantri Techzone Private Limited*** (supra), would appear to support the case of the respondents, but if the entire judgment in the said case is perused, it is not so. It can clearly be seen that the learned

Advocate General of the State has specifically argued that the Revised Master Plan is statutory in nature and the NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. It was therefore argued that the order of the NGT to that extent was liable to be set aside. It was similarly argued on behalf of the other appellant that the order of the NGT impugned therein which revised buffer zones also had the effect of amending the Revised Master Plan 2015. A perusal of para 29 of the ***Mantri Techzone Private Limited*** (supra) would clearly reveal that the counsel appearing for the applicants before the High Court has fairly conceded to the setting aside of those general directions. It could thus be seen that, though the issue was raised before the High Court with regard to the power of the NGT to issue such directions, this Court did not go into that issue on the basis of the concessions made by the appellants. We are therefore of the considered view that the observations found in para 47 of the ***Mantri Techzone Private Limited*** (supra) could not be construed to be a precedent or a *ratio decidendi*.

77. We may also gainfully refer to the observations made by this Court in the case of ***Director General (Road Development) National Highways Authority of India*** (supra). In the said case, one of the challenges was the notification issued by the State Government under Section 154 of the MRTP Act. The notification dated 14th November 2017 referred to the general directions issued by the NGT in its order dated 19th May 2015. Vide the said directions, it was directed that the planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills up to 100 feet should be shown as “No Development/Open Space Reservation”. It further directed that in the event the 100 feet area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR. The Court observed thus:

“92. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14-11-2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes “hills”, and how they can be applied in towns and

communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the authorities concerned. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the State issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders [*Aam Aadmi Lokmanch v. State of Maharashtra*, 2015 SCC OnLine NGT 11] , only underlines the lack of any application of mind on the part of the State, while issuing them.

93. For the above reasons, we hold that the impugned judgment [*Harshada Coop. Housing Society Ltd. v. State of Maharashtra*, 2018 SCC OnLine Bom 2576 : (2018) 6 Bom CR 154] of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14-11-2017) are hereby quashed.”

78. A perusal of the aforesaid would clearly reveal that, though the directive issued by the State Government under Section 154 of the MRTP Act was issued in accordance with the directions issued by the NGT, this Court found such exercise not to be permissible in law. This Court held that the complete absence of any reasons as to why the State issued such directions, coupled with the lack of any supporting expert report or input, renders such a directive to be an

arbitrary exercise of power. This Court, therefore, disapproved such a directive issued under Section 154 of the MRTP Act merely on the basis of the directions issued by the NGT and set aside the same.

E. Development Plan 2041.

79. In any case, we find that the appellants herein, while preparing the draft development plan, have taken into consideration the suggestions given by the NGT. Chapter 12.10 of the development plan elaborately considers the directions given by the NGT.

80. Insofar as “Green Belt” areas, core areas and non-core areas are concerned, the development plan has considered as under:

“12.11.4 Implication of Ld. NGT Order

That it is a settled position of law that normally a Tribunal will deal with the controversy brought before it. That is to say, it will adjudicate upon case put up by any aggrieved party before it. Without conceding on the point of limitation, that the Learned Tribunal could have only adjudicated upon the case put up before it. The case put up before it in nutshell was that no construction should be allowed in forests and green belt area. As already submitted green belt areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. As per IDP Provisions, only reconstruction is permitted in the area and that too

on old lines. No new construction or increase in constructed area is permissible in these areas. So far as the forest lands are concerned, no construction upon that is permissible unless there is a clearance from the Central Government as per the provisions of Forest Conservation Act. Further, no construction is permissible on the forest land until or unless proposal is cleared by the Competent Authority i.e. Central Government, but while disposing of the case, the Learned Tribunal has entered the field, which does not belong to it. Whether the building should be one storey or three storeys is for the Competent Authority to decide. Town Planning does not come under the purview of the NGT. Further the state of Himachal Pradesh is not a non-compliant State. It has been taking care of environment and has also been taking care of Town Planning.”

81. Insofar as “Green Belt” areas are concerned, it has been found that “Green Belt” areas are those areas in which the land is also owned by the private land owners and is occupied by the structures. It provides that as per the provision, reconstruction would be permitted in the area and that too on old lines. No more new construction or increase in constructed area is permissible in these areas. It further provided that insofar as forest lands are concerned, no construction upon them would be permitted unless there is a clearance from the Central Government as per the provisions of the FC Act.

82. Not only that, as has already been referred to hereinabove, the learned Advocate General has placed on

record a Cabinet decision which provides that construction would be permitted only in those plots in which there are no trees. It is further pointed out that the construction in “Green Belt” areas, would be permitted only to the extent of single storey with attic.

83. The development plan has elaborately considered as to how vertical construction will have to be preferred over the horizontal construction, inasmuch as the land to be utilized for actual construction would be lesser and there would be more open space.

84. The development plan also consists of the Chapters on “Land Use Zoning” and “Development Control Regulations”. In “Green Belt” areas, limited construction with one parking floor + one floor + habitable attic would be permitted for residential use only. It is further clear that the parking floor is permissible only where the plot of land has an access to the motorable road. The maximum permissible height shall be 10 metre. The maximum permissible FAR shall be 1.0. The setbacks norms as prescribed for R1 use in core area shall be applicable. Reconstruction on old lines shall be permissible with same plinth area and number of storeys. Cutting and

felling of trees shall be prohibited. Change of land use and building use shall be prohibited. So also detailed provision has been made for heritage land use as well as core areas and non-core areas.

85. A special provision has been made for Sinking and Sliding Areas which reads thus:

“17.2.2.9. Sinking and Sliding Area

- i. The development permission shall be granted by the Competent Authority in whose jurisdiction the Sinking and Sliding Area falls.
- ii. The Regulations as applicable for Core/Green Area and Non-Core Area shall be applicable in Sinking and Sliding Area.
- iii. The Soil Investigation Report shall be submitted by the applicant before construction/reconstruction of building(s) for the areas falling in sinking and sliding zones as defined in Shimla Planning Area, or for any reclaimed piece of land. The Soil Investigation Report shall be given by the Geologist in the prescribed form. In case of negative observations, the construction shall not be allowed/shall be allowed as per conditions imposed by the consultant.”

It can thus clearly be seen that unless a Soil Investigation Report is provided by the applicant before construction/reconstruction of building(s) for the areas falling in Sinking and Sliding Zones as defined in SPA, construction

would not be allowed or allowed only as per the conditions imposed by the consultant. The Soil Investigation Report is required to be given by the Geologist in the prescribed form.

86. It can thus be seen that while preparing the development plan, due care has been taken to ensure that environmental aspects are taken care of.

87. We, however, do not propose to stamp our approval to all the provisions made in the development plan. In that regard, if any person feels aggrieved by any of the provisions, they would always be at liberty to take recourse to such remedy as is available in law.

88. However, we are of the considered view that the NGT could not have directed the delegatee who has been delegated powers under the TCP Act to enact the regulations, to do so in a particular manner. As a matter of fact, the NGT has imposed fetters on the exercise of powers by the delegatee, who has been delegated such powers by the competent legislature. In any case, it is clear that there were sufficient safeguards under the provisions of the TCP Act inasmuch as an aggrieved citizen was entitled to raise objections, give suggestions and was also entitled to an opportunity of hearing on more than one

occasion. The first one at the stage of finalization of the draft development plan by the Director, and the second one at the stage of grant of approval and publication of the final development plan by the State Government. We are informed that 97 objections were received to the draft development plan in the present case. An opportunity of being heard was given to all of them before finalization of the draft development plan. We are also informed that out of 97 objectors, all, except 5, had requested for more relaxation.

89. The first order of NGT is also sought to be attacked by the appellants on the ground that the subject matter of the dispute did not concern any of the enactments listed in Schedule I of the NGT Act and therefore, the OA filed under Section 14 of the NGT Act itself was not tenable.

90. Since we find that the first order of NGT is not sustainable on the ground of encroaching upon the powers of the delegatee to enact a delegated legislation and also amounts to imposing fetters on the exercise of such powers, we do not propose to go into the said issue and we keep the same open to be adjudicated upon in appropriate proceedings.

Transferred Case (C) No. 2 of 2023.

F. Whether the NGT was justified in passing the order dated 14th October 2022 when the High Court was seized of the same issue during the pendency of Civil Writ Petition No.5960 of 2022?

91. Insofar as the second order of NGT is concerned, the same arises out of publication of the draft development plan on 8th February 2022. After the draft development plan was published, in all 97 objections/suggestions were received by the State of Himachal Pradesh within the stipulated time period and the same were heard. After considering the objections and suggestions including the recommendations made by the NGT in its first order, the development plan was finalized for 22,450 hectares of SPA upto the year 2041. However in the meantime, CWP Nos. 23 and 37 of 2022 were filed before the High Court of Himachal Pradesh praying *inter alia* for stay of the draft development plan.

92. Subsequent to the finalization of the draft development plan, the respondent No.1 herein filed another application being OA No. 297 of 2022 before the NGT. The NGT passed an *ex parte ad interim* order dated 12th May 2022 restraining the

appellants herein from taking any further steps in pursuance of the draft development plan.

93. Being aggrieved thereby, the State of Himachal Pradesh – appellant herein preferred CWP No. 5960 of 2022 before the High Court of Himachal Pradesh under Article 226/227 of the Constitution of India. A prayer was made in the said writ petition to declare the order of the NGT dated 12th May 2022 to be without jurisdiction. It was also prayed that the Town and Country Planning Department and Municipal Corporation be permitted to perform their statutory duties and be authorized to grant approvals, sanctions and building permissions in accordance with the development plan. The respondents therein have filed their reply to the said writ petition and the appellants filed their rejoinder.

94. Despite the pendency of CWP No. 5960 of 2022 as well as other writ petitions relating to the same subject matter, the NGT passed its second order holding that the draft development plan, being in conflict with its first order, is illegal and therefore cannot be given effect to.

95. Immediately after the said order was passed, the appellants filed an application before the High Court of

Himachal Pradesh in CWP No. 5960 of 2022 seeking leave to amend the writ petition so as to challenge the order of the NGT dated 12th May 2022.

96. This Court, vide order dated 14th November 2022, in Civil Appeal Nos. 5348-5349 of 2019, transferred the said CWP No. 5960 of 2022 before itself and directed it to be heard along with Civil Appeal Nos. 5348-5349 of 2019. The said writ petition has been renumbered as Transferred Case (C) No. 2 of 2023.

97. At the outset, we allow the application seeking leave to amend the writ petition so as to challenge the second order of NGT and the impleadment application filed before the High Court of Himachal Pradesh.

98. Subsequently, on 3rd May 2023, we passed an order in these proceedings, as under:

“1. We are informed that on account of directions issued by the National Green Tribunal (NGT), the final development plan which is presently at the stage of ‘draft notification’ could not be published. We are further informed by the learned Advocate General for the State of Himachal Pradesh that 97 objections have been received to the draft development plan.

2. In light of the facts and circumstances of these cases, we find that it will be appropriate, that the State Government decides the objections received to

the draft development plan and after considering the same issue a final development plan.

3. We, therefore, direct the State of Himachal Pradesh to consider the objections to the draft development plan, decide them and publish the final development plan within a period of six weeks from today.

4. We further clarify that after the final development plan is published, it would not be given effect to for a period of one month from the date of its publication.

5. It is further directed that no construction should be permitted on the basis of the draft development plan.

6. Learned counsel appearing for the impleaders submits that certain constructions are being carried out without there being a sanctioned plan.

7. If any such construction is carried out without there being a sanctioned plan, indisputably, such a construction would be an unauthorized construction.

8. We, therefore, grant liberty to the applicant(s) to take recourse to the remedy available under Article 226 of the Constitution of India and bring unauthorized constructions to the notice of the High Court.

9. Needless to state that on such petitions being filed, the High Court would decide such petitions with due urgency that the issue requires.

10. List these matters on 12.07.2023.”

99. In pursuance of the aforesaid directions, the Town and Country Planning Department, Government of Himachal Pradesh had notified the final development plan on 20th June 2023.

100. It could thus be seen that when the second order of NGT was passed, the writ petition challenging the interim order dated 12th May 2022 was very much pending before the High Court. Not only that, two other writ petitions being CWP Nos. 23 and 37 of 2022, challenging the draft development plan, were also pending before the High Court. It is thus clear that the High Court was in seisin of the matter related to finalization of the draft development plan.

101. A Constitution Bench of this Court in the case of ***L. Chandra Kumar v. Union of India and Others***²⁷ was considering the issue regarding ouster of jurisdiction of this Court and the High Courts under Articles 32 and 226 of the Constitution of India as was provided under the Administrative Tribunals Act, 1985 (for short, “AT Act”). The AT Act was constituted under the enabling provisions of Article 323-A of the Constitution of India. Sub-clause (d) of Clause (2) of Article 323-A specifically enables the Parliament to legislate a law for establishment of AT Act and also provides for exclusion of jurisdiction of all the Courts except jurisdiction of

²⁷ (1997) 3 SCC 261 : 1997 INSC 288

this Court under Article 136 with respect to disputes or complaints referred to in Clause (1). This Court after scanning the entire law on the question as to whether the powers of this Court and High Courts of judicial review as could be found in Articles 32 and 226 respectively amounts to basic structure or not, observed thus in paragraph nos. 78 & 79:-

“78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature

and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

102. It could thus be clearly seen that this Court, even when a provision in the Constitution enabled the Parliament to make a law thereby excluding the powers of judicial review except under Article 136 of the Constitution, held that the

power of judicial review vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure and, therefore, the power of High Courts and this Court to test the constitutional validity of legislations can never be ousted or excluded. This Court further goes on to observe that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.

103. It will be further relevant to refer to the following observations of this Court in paragraph nos. 90 to 92 in the said case which read thus: -

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be

adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the

Constitution. In *R.K. Jain's case*, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.”

104. It would thus reveal that the Constitution Bench of this Court in unequivocal terms has held that the Tribunals will have a power to handle matters involving constitutional issues. This Court held that if it is held that the Tribunals do not have power to handle matters involving constitutional issues, they could not serve the purpose for which they were

constituted. It has further been observed that on the other hand to hold that all such decisions will be subject to jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India and before Division Bench of High Court within whose jurisdiction the concerned Tribunal falls will serve two purposes. It held that while saving powers of judicial review of legislative action, vested in the High Courts under Articles 226 and 227 would ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. The Constitution Bench of this Court clearly holds that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

105. The perusal of paragraph 92 of the judgment of the Constitution Bench would further reveal that the function of the Tribunals is only supplementary and all such decisions of

the Tribunals would be subject to scrutiny before the Division Bench of respective High Courts. The Constitution Bench holds that all such Tribunals will continue to act as the only Courts of first instance in respect of areas of law for which they have been constituted. It has been held that it will not be open for a litigant to directly approach the High Courts even in cases where the question of vires of statutory legislations (except as mentioned where the legislations which creates the particular legislation) is challenged by availing the jurisdiction of the Tribunal concerned.

106. It could thus clearly be seen that it is a settled position of law that the High Courts exercise the power of judicial review over all the Tribunals which are situated within its jurisdiction.

107. We may gainfully refer to the observations of this Court in the case of ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***²⁸, wherein this Court has succinctly culled down the position as under : -

²⁸ (2013) 11 SCC 404 : 2012 INSC 601

“12. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. *East India Commercial Co. Ltd. v. Collector of Customs and Officials Liquidator v. Dayanand*) (SCC p.57, paras 90-91).”

108. It could thus be seen that this Court in unequivocal terms held that no Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. It held that such obedience would also be conducive to their smooth

working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. It has been held that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court expressed a caution that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. This Court further held that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is *sine qua non* for effective and efficient functioning of the judicial system.

109. In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one

challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.

110. It will also be relevant to refer to the observations of this Court in the case of ***Raghu Ramakrishna Raju Kanumuru (Member of Parliament)*** (supra), which read thus:

“**13.** We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed out that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.”

111. It can be seen from the perusal of the orders of the NGT itself that though the NGT was informed about the High Court being in seisin of the proceedings, it went on to hold that the judgment given by it was binding and therefore, the draft development plan, which in its view, was not in conformity with its judgment, was liable to be set aside.

112. In any case, the second order of NGT is passed basically on the basis of the first order of NGT. Since we have held the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside, on the short ground. This, apart from the fact that as discussed hereinabove, on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter and specifically when it was informed about the same.

G. Balancing the need for Development and Protection of the Environment.

113. A need for maintaining a balance between the development and protection/preservation of environmental ecology has been emphasized by this Court time and again.

114. A three-Judges Bench of this Court in the case of ***Indian Council for Enviro-Legal Action v. Union of India and Others***²⁹, has observed thus:

“31. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development

²⁹ (1996) 5 SCC 281 : 1996 INSC 237

and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.”

115. This Court, again in the case of ***Essar Oil Limited v. Halar Utkarsh Samiti and Others***³⁰, emphasizing on the need for removal of deadlock between the development on the one hand and the environment on the other hand, observed thus:

“**27.** This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.....”

³⁰ (2004) 2 SCC 392 : 2004 INSC 40

116. Emphasizing the need for sustainable development by balancing between the environmental protection and developmental activities, this Court, in the case of ***N.D. Jayal and Another v. Union of India and Others***³¹, observed thus:

“**22.** Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647] and in *M.C. Mehta v. Union of India* [(2002) 4 SCC 356] it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development”. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.”

117. Again, in the said case, stressing on the right to clean environment to be a right guaranteed under Article 21 of the Constitution and also noting that the right to development also

³¹ (2004) 9 SCC 362 : 2003 INSC 438

is a component of Article 21 of the Constitution, this Court observed thus:

“24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The “development” is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya Sen pointed out that “the issue of development cannot be separated from the conceptual framework of human right”. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.”

118. Recently, in the case of **Rajeev Suri** (supra), emphasizing the need for sustainable development, this Court observed thus:

“520. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression “sustainable development” incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that

sustainable development is indeed a principle of development, it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.

521. By the Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

“1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

522. The right to development, thus, is intrinsically connected to the preservice of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between the right to development and the right to natural environment.

523. In *International Law and Sustainable Development*, Arjun Sengupta in the chapter “Implementing the Right to Development [International Law and Sustainable Development — Principles and Practice (Publisher : Martinus Nijhoff, Edn. 2004) p. 354.]” notes thus:

“... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other...”

119. In the case of ***Resident’s Welfare Association*** (supra), this Court, speaking through one of us (B.R. Gavai, J.), observed thus:

“**151.** One another important aspect that needs to be taken into consideration is the adverse impact on environment on account of haphazard urbanisation. It will be relevant to refer to Clause 20.3 of the CMP-2031 which we have already reproduced hereinabove. It has been recommended that an Effective Environmental Management Plan be devised for the region including Chandigarh, which includes environmental strategy, monitoring regulation, institutional capacity building and economic incentives. It is observed that the proposal needs a legal framework and a monitoring committee to examine the regional level proposals/big developments by the constitution of an Inter-State High-Powered Regional Environmental Management Board, as per the proposal of the Ministry of Environment and Forests, Government of India.

152. The United Nations Environment Programme (“UNEP”) notes in its publication titled “*Integrating the Environment in Urban Planning and Management — Key Principles and Approaches for Cities in the 21st Century*” that more than half of the world's population is now living in urban areas. It further noted that by the year 2050, more than half of Africa and Asia's population will live in towns and cities. It recognised that City Development Strategies (“CDSs”) have shown how to integrate environmental concerns in long-term city visioning exercises. It states that

environmental mainstreaming can help to incorporate relevant environmental concerns into the decisions of institutions, while emerging ideas about the green urban economy show how density can generate environmental and social opportunities. It states that the strategies need to be underpinned with governance structures that facilitate integration of environmental concerns in the planning process.

153. The said publication defines EIA to be an analytical process or procedure that systematically examines the possible environmental consequences of the implementation of a given activity (project). It is aimed to ensure that the environmental implications of decisions related to a given activity are taken into account before the decisions are made.

154. Judicial notice is also taken of the cover story published in the weekly, *India Today*, dated 24-10-2022, titled as “*Bengaluru — How to Ruin India's Best City*” by Raj Chengappa with Ajay Sukumaran. The said article depicts the sorry state of affairs as to how the City of Bengaluru, once considered to be one of India's best cities, a “Garden city” has been ruined on account of haphazard urban development. It takes note of as to how on account of one major spell of rain in the September of 2022, the city bore the brunt of nature's fury. Various areas of the city were inundated with heavy rains. The loss the flood caused to the Outer Ring Road tech corridor alone was estimated to be over Rs 225 crores.

155. The article notes that, while on one hand, on account of heavy rains, many of the houses were submerged in water, on the other hand, the city faced a huge shortage of drinking water.

156. The article further notes that rapid expansion of the city with no appropriate thought given towards transportation and ease of mobility has led to nightmarish traffic jams on its arterial roads. It notes

that, almost overnight, Bengaluru's municipal jurisdiction grew from 200 sq km to 800 sq km. It observes that the only one to benefit was the politician-businessman-builder nexus, which has thrived. It further noted that though posh colonies mushroomed in new areas, the infrastructure lagged, as roads remained narrow, the drainage poor, and no adequate provision for garbage disposal too.

157. The article notes that the primary canals known locally as *rajakaluves* were once natural rain-fed streams across which farmers built small bunds over time, to arrest the flow of water and create lakes. It further notes that these interlinked man-made lakes worked as a storm-water drain network. However, in order to meet the demand for space for construction and roads, the administrators allowed the lakes to be breached regularly. The lakes, which once numbered a thousand-odd, are now reduced to a paltry number. Worse, the *rajakaluves* that channelised the storm water had buildings built over them.

158. The warning flagged by the City of Bengaluru needs to be given due attention by the legislature, executive and the policy-makers. It is high time that before permitting urban development, EIA of such development needs to be done.”

120. Again, while emphasizing the need for balancing the development along with preservation of ecology and environment, this Court, speaking through one of us (B.R. Gavai, J.), in the case of ***State of Uttar Pradesh and Others***

v. Uday Education and Welfare Trust and Others³², while

referring to the earlier judgments on the issue observed thus:

“**100.** Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of *Samatha v. State of A.P.* [AIR 1997 SC 3297 : (1997) 8 SCC 191], a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P. v. Ganesh Wood Products* [(1995) 6 SCC 363] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within

³² 2022 SCC OnLine SC 1469 : 2022 INSC 465

the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of *Essar Oil Ltd. v. Halar Utkarsh Samiti* [(2004) 2 SCC 392], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 5 SCC 281] were quoted as under:

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other

developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment.”

(c) In the case of *Maharashtra Land Development Corporation v. State of Maharashtra* [(2011) 15 SCC 616] reference was made to *Glanrock Estate Private Limited v. State of Tamil Nadu* [(2010) 10 SCC 96] wherein it was observed as under:

“27. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995), it has been held that ‘intergenerational equity’ is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The ‘precautionary principle’ and the ‘polluter pays principle’

flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle.”

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad v. Union of India* [(1997) 2 SCC 267 : AIR 1997 SC 1228] wherein this Court enunciated the definition of “forest” in the following words:

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not

only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof...”

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.”

121. It is needless to state that, this Court, in a series of judgments and orders passed in the case of **T.N. Godavarman Thirumulkpad v. Union of India and Others**³³ and lastly

³³ 2023 INSC 430

vide order dated 26th April 2023, passed by a three-Judges Bench to which one of us (B.R. Gavai, J.) was a member, has emphasized the need to have a balance between the requirement of development and preservation of ecology and environment.

122. It is thus clear that while ensuring the developmental activities so as to meet the demands of growing population, it is also necessary that the issues with regard to environmental and ecological protection are addressed too.

V. CONCLUSION

123. We have gone through the development plan. The development plan has been finalized after taking into consideration the reports of various expert committees and the studies undertaken with regard to various aspects including environmental and ecological aspects.

124. We, however, clarify that we have not considered the development plan in minute details. Upon its *prima facie* consideration, we have come to a view that there are sufficient safeguards to balance the need for development while taking care of and addressing the environmental and ecological concerns. We may however not be construed as giving our

imprimatur to the said development plan. At the same time, it cannot be ignored that the development plan has been finalized after various experts from various fields including those concerned with urban planning, environment etc., were taken on board. It also cannot be ignored that the development plan has been finalized after undergoing the rigorous process including that of inviting objections and suggestions at two stages, giving the hearing to such objectors and suggesters and after considering the same. If any of the citizen has any grievance that any provision is detrimental to the environment or ecology, it is always open to raise a challenge to such an independent provision before the appropriate forum. Such a challenge can be considered in accordance with law. But, in our view, the development plan, which has been finalized after taking recourse to the statutory provisions and undergoing the rigors thereto, cannot be stalled in entirety thereby putting the entire developmental activities to a standstill.

125. Insofar as the grievance of the Interveners, who are the plot holders in the 'Green Belt' area, with regard to payment of compensation is concerned, we find that the said issue would

be beyond the scope of the present proceedings. We, therefore, without specifying any opinion on such claim, relegate the interveners to avail the appropriate remedy available to them in law.

126. In the result, we pass the following order:

- (i) The Civil Appeal Nos. 5348-49 of 2019 as well as the Transferred Case (C) No. 2 of 2023 are allowed;
- (ii) The orders of the NGT dated 16th November 2017 in Original Application No. 121 of 2014, dated 16th July 2018 in Review Application No. 8 of 2018, dated 12th May 2022 and 14th October 2022 in Original Application No. 297 of 2022 are quashed and set aside; and
- (iii) The appellant-State of Himachal Pradesh and its instrumentalities are permitted to proceed with the implementation of the development plan as published on 20th June 2023 subject to what has been observed by us hereinabove.

127. In the facts and circumstances of the present case, there is no order as to costs.

128. Pending application(s), if any, shall stand disposed of in the above terms.

.....J.
[B.R. GAVAI]

.....J.
[ARAVIND KUMAR]

**NEW DELHI;
JANUARY 11, 2024.**

Tuesday, July 14, 2026 at 9:50:21 AM India Standard Time

Subject: Re: Written Submissions in Digambar Bag VS State Odisha| OA No.200 of 2025
Date: Tuesday, 14 July 2026 at 9:50:13 AM India Standard Time
From: Kartik Kaushal
To: sankarprasadpani@gmail.com
Attachments: FINAL WRITTEN SUBMISSIONS .pdf

Best Regards,

Kartik Kaushal

Advocate

Office: Chamber No. 381, Block II,
High Court of Delhi, New Delhi -110003
Mob: 9711035315

From: Kartik Kaushal <kartik@kaushalandco.com>

Date: Tuesday, 14 July 2026 at 9:49 AM

To: sankarprasadpani@gmail.com <sankarprasadpani@gmail.com>

Subject: Written Submissions in Digambar Bag VS State Odisha| OA No.200 of 2025

Sir,

Please find attached a copy of Written Submissions in filed on behalf of Respondent No.9 in the captioned matter.

Kindly treat the present mail as service.

Best Regards,

Kartik Kaushal

Advocate