

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO.30 OF 2023 (WZ)

IN THE MATTER OF:

AHMEDABAD DISTRICT COOPERATIVE MILK PRODUCERS'

UNION LTD. (UTTAM DAIRY)

... APPELLANT

VERSUS

GUJARAT POLLUTION CONTROL BOARD

...Respondent

Additional Affidavit of Appellant

I, Narendra Sharma Son of Govindsharan Sharma, aged about 47 years, occupation: in-charge managing director of the appellant-Ahmedabad District Co-op. Milk Producers' Union Ltd. known as "Uttam Dairy", having office at: Opp. Ramdev Pir Temple, Near N. M. Padaliya Pharmacy College, Sarkhej-Bavla Highway Road, Navapura, Taluka-Sanand, District-Ahmedabad-382210, State-Gujarat do hereby solemnly affirm and state as under:

1. I stick to the averments and contentions raised in the memo of appeal and I am filing present additional affidavit in pursuance of the order dated 15.01.2025, I am filing present additional affidavit for limited purpose as here under. I also submit that compilation of Civil Appeal No. 9398 of 2019 preferred before the Hon'ble Supreme Court of




India was provided to my Ahmedabad based advocate on 11.6.2025 at 10 a.m. by the learned advocate/s for the respondent board.

2. I state that, order dated 11.01.2019 is annexed as Annexure-A7 in the compilation of Civil Appeal No. 9398 of 2019, relevant page starts from page no. 106 and relevant direction given by the learned National Green Tribunal Principal Bench, New Delhi are on page no.126 paragraph no. 55(ii) for levying of environment damage compensation and also directed to constitute committee to make report to calculate such damages and cost of restoration of environment.

3. I state that, aforesaid order dated 11.02.2019 passed by learned National Green Tribunal Principal Bench, New Delhi in Original Application no. 95 of 2018 had been challenged before the Hon'ble Supreme Court in Civil Appeal Diary No. 5264 of 2019 and aforesaid Civil Appeal was disposed of on 22.02.2019 and the copy of the said order is at Annexure-A9 in the compilation of Civil Appeal No. 9398 of 2019 at page no.132 to 134. In the very same matter Hon'ble the Supreme Court has permitted the industries to



approach the Learned National Green Tribunal qua the direction in respect of interim compensation granted by learned National Green Tribunal Principal Bench, New Delhi in Original Application no. 95 of 2018 vide order dated 11.01.2019.



4. I state that, said industries has approached learned National Green Tribunal Principal Bench, New Delhi by filing Review Application No.8 of 2019 in Original Application no. 95 of 2018 which was dismissed vide order dated 25.02.2019 on page no.182-184 as Annexure-A11 in the compilation of Civil Appeal No. 9398 of 2019.

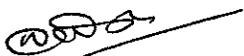
5. I state that, it seems that proceedings of Original Application no.95 of 2018 had taken place on 28.08.2019 in continuation and pursuance of the order dated 11.1.2019 and in which aforesaid order date 11.01.2019 had been referred under the heading of EARLIER PROCEEDINGS (para-4 on page no. 26, para 32 onwards on page 33, 34 of the compilation of citation submitted by the appellant) and further reports are also submitted in pursuance of the order dated 11.01.2019 and the same is observed on page no.35 in

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paragraph no.8 and at page no. 37 in paragraph no.11, on page no.42 in paragraph no.13, on page no.43 in paragraph no. 15-16 and lastly it was summed up by the Learned Tribunal at page no.43 in paragraph no.17 (in the compilation of citation submitted by the appellant) as compensation as assessed by the committee is liable to be recovered as "Interim Compensation" and matter was posted on 11.02.2020 for further consideration.

I state that, aforesaid order dated 28.08.2019 is challenged before the Hon'ble Supreme Court by filing Civil Appeal Diary No. 43253 of 2019-page no.46 (in the compilation of citation submitted by the appellant) in which the Hon'ble Supreme Court has granted Stay on the Order dated 28.08.2019 passed in O. A. No. 95 of 2018 vide order dated 04.12.2019. this Civil Appeal seems to have been pending even as on date. I submit that in the proceeding before the Hon'ble Supreme Court, only order dated 28.8.2019 is prayed to be quashed and set aside.

6. I state that, appellant have annexed THE GENERAL FRAMEWORK FOR IMPOSING ENVIRONMENTAL DAMAGE COMPENSATION as Annexure-A7 to the compilation of appeal which starts from page



no. 59 to 95 and the very same aforesaid policies had been published in December, 2022.

7. I state that, after the aforesaid order passed by the Hon'ble Supreme Court on 04.12.2019, learned National Green Tribunal Principal Bench, New Delhi had disposed of Execution Application No.5 of 2023 in O.A. No.95 of 2018 and specifically directed / observed in paragraph No.10 as report of CPCB had taken on record and disposed of the matter treating the earlier orders as final subject to order/further orders of the Hon'ble Supreme Court in the aforesaid proceedings elaborated on page no.46 (in the compilation of citation submitted by the appellant).

8. I state and submit that, power to impose damages for polluting the environment/water is provided under The National Green Tribunal Act, 2010 and the powers are vested with the Tribunal not with the respondent board. Section 20 of the said Act provides that Tribunal shall apply principles that the polluter pays the principle, power to assess and recover the damages is with the Tribunal not with the respondent board. Hence, the order itself imposing damages of RS. 25 lakhs



on appellant is without jurisdiction. It being a purely question of law can be raised at any time as per the settle law by the Hon'ble the Supreme Court in case reported in 2011 (12) SCC 695 (National Textile Corporation Limited Versus Nareshkumar Badrikumar Jagad and others. Copy of this citation is appended hereto and marked as Annexure-A15 to the present affidavit.

9. I state that the order passed by Learned Tribunal dated 11.01.2019 was interim in nature and on final disposal it has merged with the final order dated 28.08.2019 which was also interim in nature and it was considered to be final subject to the outcome of the further orders of the Hon'ble Supreme Court. In any event, the order dated 28.08.2019 is stayed by the Hon'ble Supreme Court which include effect of the order dated 11.01.2019. I also bring kind notice of the Learned tribunal that the compensation is levied as per the order dated 11.01.2019 but that order is also passed by the Learned Tribunal not by the board as board have got no powers. In any event order dated 11.01.2019 is stayed by the Hon'ble Apex Court.



10. I state that, the impugned order is passed under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and the said relevant provisions reads as under:

"[33A. Power to give directions. - Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. Explanation. -For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process;

or (b) the stoppage or regulation of supply of electricity, water or any other service.]"

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as per the above provision the respondent board have power to give direction is clearly prescribed in clause (a) and (b) which does not include power of levying of damages. Whatever was within the power of the board including imposition of fine has been imposed and having no alternative but to paid under protest but there is no power of assessing damages. Even though appellant cannot afford to get the milk of the milk producers' spoiled and therefore the levy of such huge damages assessed without any basis and powers with the respondent board and appellant has to deposit the same as large quantities of milk of the milk producers' members of the appellant could not allow to be spoiled.

Affidavit

I, Narendra Sharma Son of Govindsharan Sharma, aged about 47 years, occupation: in-charge managing director of the appellant, having office at: Opp. Ramdev Pir Temple, Near N. M. Padaliya Pharmacy College, Sarkhej-Bavla Highway Road, Navapura, Taluka- Sanand, District-Ahmedabad-382210, State-Gujarat do hereby solemnly affirm and state as under.



I state and submit that Paragraph no.1 of the present additional affidavit is a formal in nature, Paragraph nos.2 to 5,7 and 9 of present additional affidavit are on the basis of the compilation of Civil Appeal 9398 of 2019 preferred before the Hon'ble Supreme Court of India. I state that Paragraph no.6 present additional affidavit is based upon the annexure submitted with the appeal memo and paragraph nos.8 and 10 are based upon the legal advice. I state and submit that whatever is stated herein above in Paragraph nos. 1 to 10 are explained to me in detailed and same are true and correct as per my knowledge, information and belief.

Solemnly affirmed at Ahmedabad on the 1st day of August, 2025.

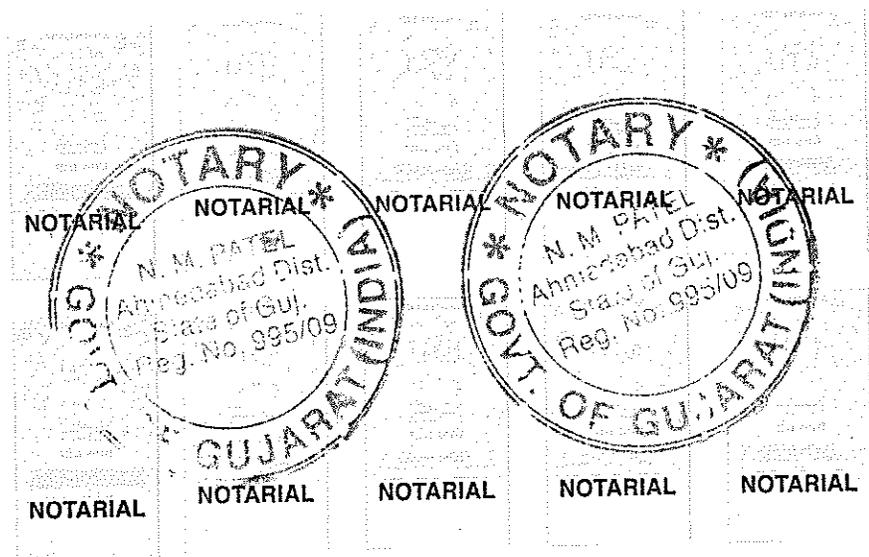
Deponent
MANAGING DIRECTOR
AHMEDABAD DISTRICT CO-OP
MILK PRODUCERS UNION LTD.

Identified By

Advocate

SR. No. S 274 2025
SOLEMNLY AFFIRMED
BEFORE ME

N. M. PATEL NOTARY
DATE: 1-8-25





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19. However, the learned counsel appearing for the applicants have submitted that the NBA has rendered great service for a long number of years to the downtrodden and poor farmers and thus NBA should not be deprived of the opportunity to represent the poor peasants. Mr Sanjay Parikh, learned counsel has expressed remorse on behalf of the applicants that the applicants ought to have acted with more responsibility.

20. In view of the above, para 168 of *Narmada Bachao Andolan case*¹ stands modified to the extent as under:

“In view of the above, we reach the inescapable conclusion that NBA has not acted with a sense of responsibility and not taken appropriate pleadings as required in law. However, in a PIL, the Court has to strike a balance between the interests of the parties. The Court has to take into consideration the pitiable condition of the oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the Court must view presentation of any matter by NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein.”

21. With these observations, the applications stand disposed of.

d

(2011) 12 Supreme Court Cases 695

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

Civil Appeal No. 7448 of 2011[†]

NATIONAL TEXTILE CORPORATION LIMITED .. Appellant;

Versus

NARESHKUMAR BADRIKUMAR JAGAD .. Respondents.
AND OTHERS

And

Civil Appeals No. 7449 of 2011[‡] with No. 7450 of 2011

TATA MILLS (A UNIT OF THE NATIONAL TEXTILE CORPORATION LIMITED) .. Appellant;

Versus

TATA HOUSING DEVELOPMENT COMPANY LIMITED .. Respondent.

Civil Appeals No. 7448 of 2011 with Nos. 7449-50 of 2011, decided on September 5, 2011

g

A. Rent Control and Eviction — Statutory tenant/Protection of Rent Act — National Textile Corporation (NTC) — Status of — Protection available to Government under Rent Control Act, held, not available to it

h

[†] From the Judgment and Order dated 3-8-2009 of the High Court of Judicature of Bombay in Civil Revision Application No. 564 of 2008

[‡] From the Judgment and Order dated 22-10-2010 of the High Court of Judicature of Bombay in Civil Revision Application No. 699 of 2009

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— NTC, held, is merely a government company, and neither “Government” nor “government department” nor “agent” of Central Government within meaning of S. 182, Contract Act, 1872, in regard to tenancy concerned, the tenancy having vested absolutely in NTC itself, although it might be “agency” or “instrumentality” of Central Government for limited purpose of being labelled as “State” within ambit of Art. 12 of Constitution — Explaining meaning of “Government”, and “government department”, held, expression “Government” may have to be interpreted in the context of a particular statute

— In the present case, contractual tenancy period of textile mills *P* whose management in terms of 1983 Act vested in Central Government, expired in 1990 but *P* continuing as tenant by holding over leased premises — 1995 Act coming into effect — In such circumstances, what vested in Central Government and vested absolutely thereafter in NTC in terms of Ss. 3(1) and (2) of 1995 Act, held, was the right in tenancy in suit premises — Hence, rejecting NTC’s contention that Central Government still continued to be tenant and that NTC was merely its “agent”, held, tenancy having vested absolutely in NTC itself, NTC was not entitled to protection of either S. 3(1)(a) or S. 3(1)(b) of Maharashtra Rent Control Act, 1999 against tenancy termination notice — Textile Undertakings (Nationalisation) Act, 1995 — Ss. 3(1) & (2), 2(g) & (m) and Sch. I Col. (2) — Textile Undertakings (Taking Over of Management) Act, 1983 — Ss. 3, 2(d) & (e) and Sch. I — Companies Act, 1956 — Ss. 617 & 2(18) — Maharashtra Rent Control Act, 1999 (18 of 2000) — Ss. 3(1)(a) & (b) — Contract Act, 1872 — S. 182 — Constitution of India, Arts. 12 and 298 to 300

B. Rent Control and Eviction — Eviction suit — Maintainability — New plea challenging maintainability, raising purely factual question for first time before Supreme Court, not entertained — Lessee textile mills’ right to tenancy in suit premises vesting in Central Government and thereafter vesting in National Textile Corporation (NTC) in terms of S. 3 of 1995 Act — Eviction suit filed by owner of suit premises against NTC decreed, and appeal and revision petition thereagainst dismissed — NTC’s plea against maintainability of eviction suit on ground that NTC was merely agent of real tenant Central Government, having not been taken before courts below, held, did not warrant review of impugned judgment as it involved a question of fact — Civil Procedure Code, 1908 — Or. 6 Rr. 1, 2, 4 & 17 and Or. 8 R. 2 — Contract Act, 1872, Ss. 182 and 230

C. Constitution of India — Art. 136 — New plea in respect of any factual controversy although cannot be taken, held, raising of a new ground which raised a pure legal issue, for which no inquiry/proof is required, can be permitted at any stage of the proceedings — Legal position summarised — Held, such however was not the case herein — New plea raising only factual question, not entertained — Practice and Procedure — Pleadings/ New plea

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D. Constitution of India — Arts. 12, 298 to 300, 73, 77, 162 and 166 — Meaning of expressions “Government”, “government department”, restated
a — Administrative Law — Executive Wing of State — General Clauses Act, 1897 — S. 3(23) — Civil Procedure Code, 1908 — S. 80 — Penal Code, 1860, S. 17

E. Practice and Procedure — Pleadings — Generally — Purpose of pleadings, explained — Civil Procedure Code, 1908, Or. 6 Rr. 1, 2, 4 and 17 and Or. 8 R. 2

b F. Corporate Laws — Textile Undertakings (Nationalisation) Act, 1995 — S. 4(6) — Scope and applicability — Held, it does not affect even pending cases adversely, much less proceedings arising subsequent to commencement of the Act

c G. Rent Control and Eviction — Relief — Eviction suit against National Textile Corporation (NTC) — Eviction decree upheld, but, considering nature of NTC’s business and in interest of justice, time from date of judgment i.e. 5-9-2011 to 31-12-2013 granted to vacate premises

d H. Textile Undertakings (Nationalisation) Act, 1995 — Ss. 3(1) & (2) — Vesting provision in S. 3(2) — Scope — Meaning and manner of, interpretation of words “vesting” and “vest” — Vesting or conveyance of tenancy by statutory transfer — Where textile undertaking had tenancy right in suit premises, held, said right vested in Central Government and stood thereafter transferred to and vested absolutely in National Textile Corporation (NTC) — Contention that Central Government still remained tenant and therefore was protected under exemption provisions in Rent Control Act since NTC was merely its agent, rejected — Property Law — Conveyancing — Transfer of Property Act, 1882, Ss. 5, 8, 19 and 105
e (Paras 37 to 39 and 42)

f I. Contract and Specific Relief — Specific Contracts — Agency — Agent’s rights and liabilities — Suit or proceeding against agent when principal known — Maintainability of — Challenge to, raised for first time before Supreme Court, being a question of fact, not entertained — Contract Act, 1872 — S. 230 — Civil Procedure Code, 1908, Or. 8 R. 2 (Para 43)

J. Debt, Financial and Monetary Laws — Banks and financial institutions (FIs), held, though may be part of “State” under Art. 12 for limited purposes are not part of Government nor are they government departments — State Financial Corporations Act, 1951, Ss. 2(aa) & (b), 3 and 3-A (Paras 24 to 28 and 33)

g K. Public Sector — Government Companies/PSUs — If, and when can be held to be agencies of Government — Constitution of India, Art. 12 (Paras 24 to 28 and 33)

Held :

h The questions do arise as to whether in the facts and circumstances of the present case the Government is a tenant or the appellant can be termed as the “Government” or “government department” or “agent” of the Central Government in the context of the 1999 Act. (Para 20)

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The Government loosely means the body of persons authorised to administer the affairs of, or to govern, a State. It commands and its decision becomes binding upon the members of the society. The Government includes, both the Central Government as well as the State Government. The Government is impersonal in character having three independent functionaries as its branches. It performs regal and sovereign functions, which are not alienable to any other person e.g. defence, security, currency, etc. The Government means a group of people responsible for governing the country. It consists of the activities, methods and principles involved in governing a country or other political unit.

(Para 21)

The Government is a body that governs and exercises control by issuing directions and is not governed by any other agency. It is a body politic that formulates policies and the laws by which a civil society is controlled. It is a political concept formulated to rule the nation. It is not a profit and loss establishment. Thus, government department means something purely fundamental i.e. relating to a particular Government or to the practice of governing a country. It has different wings. However, the expression "Government" may be required to be interpreted in the context used in a particular statute. The expression denotes the executive and not the legislature.

(Paras 22 and 23)

State of Rajasthan v. Sripal Jain, AIR 1963 SC 1323 : (1963) 2 Cri LJ 347; *Pashupati Nath Sukul v. Nem Chandra Jain*, (1984) 2 SCC 404; *R.S. Nayak v. A.R. Antulay*, (1984) 2 SCC 183 : 1984 SCC (Cri) 172; *V.S. Mallimath v. Union of India*, (2001) 4 SCC 31 : 2001 SCC (L&S) 629, *relied on*

To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various sections. To carry out the commercial activities by the State, the corporations have been established by the enactment of statutes and the "power to charter corporations as incidental to or in aid of governmental functions". Such corporations would ex-hypothesis be agencies of the Government.

(Para 24)

Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421 : 1975 SCC (L&S) 101; *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489, *relied on*

Banks and financial institutions carrying out financial transactions, are independent to do business subject to the regulatory laws made by the legislature. They are not under the direct executive control of the Government. They are profit and loss earning organisations coupled with all connected financial and economic activities. They are a body corporate with a limited role to play and do not "govern" people as understood by governance.

(Para 25)

Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733, *relied on*

Food Corporation of India has been held to be not a government department but a government company. The identity of the government company remains distinct from the Government.

(Paras 26 to 28)

A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620, *reiterated*

State of Punjab v. Raja Ram, (1981) 2 SCC 66; *Food Corporation of India v. Municipal Committee, Jalalabad*, (1999) 6 SCC 74, *relied on*

State of Bihar v. Union of India, (1970) 1 SCC 67; *S.S. Dhanoa v. MCD*, (1981) 3 SCC 431 : 1982 SCC (L&S) 6 : 1981 SCC (Cri) 733; *K. Jayamohan v. State of Kerala*, (1997) 5 SCC 170 : 1997 SCC (L&S) 1140; *Hindustan Steel Works Construction Ltd. v. State of Kerala*, (1997) 5 SCC 171 : 1997 SCC (L&S) 1219; *Mohd. Hadi Raja v. State of Bihar*, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265; *State v. Kulwant Singh*, (2003) 9 SCC

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193 : 2003 SCC (Cri) 1786; *Electronics Corpn. of India Ltd. v. Govt. of A.P. (Deptt. of Revenue)*, (1999) 4 SCC 458, referred to

- a An agent who receives property from or for his principal, obtains no interest for himself in the property for the reason that possession of the agent is the possession of the principal and in view of the fiduciary relationship the agent cannot claim his own possession. The appellant may be called the “agency” or “instrumentality” of the Central Government for a limited purpose, namely, to label it to be the “State” within the ambit of Article 12 of the Constitution. However, even by a stretch of imagination, the appellant cannot be held to be an
- b “agent” of the Central Government as defined under Section 182 of the Contract Act. Hence, the appellant is neither the Government nor the department of the Government, but a government company. The appellant cannot identify itself with the Central Government. The submission made by the appellant that it is merely an agent of the Central Government is not worth consideration at all as the rights vested in the appellant stood crystallised after being transferred by the Central Government. The appellant is being controlled by the provisions of the
- c 1995 Act and not by the Central Government. Whereas an agent is merely an extended hand of the principal and cannot claim independent rights.

(Paras 29, 32 and 33)

Southern Roadways Ltd. v. S.M. Krishnan, (1989) 4 SCC 603, reiterated

Chandrakantaben v. Vadilal Bapalal Modi, (1989) 2 SCC 630, referred to

Prem Nath Motors Ltd. v. Amurag Mittal, (2009) 16 SCC 274; *Vivek Automobiles Ltd. v. Indian Inc.*, (2009) 17 SCC 657, followed

- d *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111 : 2002 SCC (L&S) 633, referred to

The provisions of Sections 3(1) and (2) of the 1995 Act require construction giving proper meaning to the expression “vesting”. “Vesting” means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. “Vesting” in the general sense, means vesting in possession.

e However, “vesting” does not necessarily and always means possession but includes vesting of interest as well. “Vesting” may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word “vest” has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a

f limited vesting, being limited, *in title as well as duration*. Thus, the word “vest” clothes varied colours from the context and situation in which the word came to be used in the statute. The expression “vest” is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances.

(Paras 37, 38 and 42)

Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344;

Maharaj Singh v. State of U.P., (1977) 1 SCC 155; *Municipal Corpn. of Hyderabad v.*

- g *P.N. Murthy*, (1987) 1 SCC 568; *Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu*, 1991 Supp (2) SCC 228; *M. Ismail Faruqui v. Union of India*, (1994) 6 SCC 360; *Govt. of A.P. v. Nizam, Hyderabad*, (1996) 3 SCC 282; *K.V. Shivakumar v. Appropriate Authority*, (2000) 3 SCC 485; *Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn.*, (2001) 8 SCC 143; *Sulochana Chandrakant Galande v. Pune Municipal Transport*, (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415, relied on

- h Right vested in the Central Government stood transferred and vested in the appellant. Both are separate legal entities and are not synonymous. The appellant being neither the Government nor the government department cannot agitate that

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as it has been substituted in place of the Central Government, and acts merely as an agent of the Central Government, thus protection of the 1999 Act is available to it. Acceptance of such a submission would require interpreting the expression “vesting” as holding on behalf of some other person. Such a meaning cannot be given to the expression “vesting”. (Para 42) a

It is a settled legal proposition that an agent cannot be sued where the principal is known or has been disclosed. (Paras 31 and 43)

In the instant case, the appellant has not taken the plea before either of the courts below. In view of the provisions of Order 8 Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an “agent” of the Central Government, thus the suit against it was not maintainable. More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose. (Para 43) b

National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, CRA No. 564 of 2008 order dated 3-8-2009 (Bom), *affirmed* c

Trojan & Co. v. Nagappa Chettiar, AIR 1953 SC 235; *State of Maharashtra v. Hindustan Construction Co. Ltd.*, (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207; *Kalyan Singh Chouhan v. C.P. Joshi*, (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656, *relied on*

Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555; *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927; *Kashi Nath v. Jaganath*, (2003) 8 SCC 740; *Biswanath Agarwalla v. Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695; *Syed and Co. v. State of J&K*, 1995 Supp (4) SCC 422; *Chinta Lingam v. Govt. of India*, (1970) 3 SCC 768; *J. Jermons v. Aliammal*, (1999) 7 SCC 382, *relied on* d

Sanghvi Reconditioners (P) Ltd. v. Union of India, (2010) 2 SCC 733; *Greater Mohali Area Development Authority v. Manju Jain*, (2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639, *relied on* e

L. Textile Undertakings (Taking Over of Management) Act, 1983 — Preamble, S. 3 and Sch. I — Object of enactment of said Act, restated (Para 3)

M. Rent Control and Eviction — Maharashtra Rent Control Act, 1999 (18 of 2000) — Ss. 3(1)(a) and (b) — Validity and applicability — Decision in *Saraswat Coop. Bank Ltd. case*, (2006) 8 SCC 520, reiterated (Para 34) f

Saraswat Coop. Bank Ltd. v. State of Maharashtra, (2006) 8 SCC 520, *reiterated*

N. Rent Control and Eviction — Maharashtra Rent Control Act, 1999 (18 of 2000) — S. 3(1)(b) — Provision in, excluding public sector undertakings and public limited companies having paid-up share capital of rupees one crore or more, held, applicable in facts of present case (Para 36)

Leelabai Gajanan Pansare v. Oriental Insurance Co. Ltd., (2008) 9 SCC 720, *applied* g

D.C. Bhatia v. Union of India, (1995) 1 SCC 104, *referred to*

H-D/48558/SV

Advocates who appeared in this case :

Parag P. Tripathi, Additional Solicitor General, Mukul Rohatgi, Shyam Divan and Ramesh P. Bhatt, Senior Advocates (Kunal Bahri, Ms Anitha Shenoy, Sanjoy Ghose, Ms Mayuri Raguvanshi, Gautam Narayan, Mahesh Agarwal, Rishi Agarwal, Ranjit Shetty, Gaurav Goel, E.C. Agrawala, Rakesh Sinha and Abhijat P. Medh) Advocates for the appearing parties. h

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	<i>Chronological list of cases cited</i>	<i>on page(s)</i>
	1. (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656, <i>Kalyan Singh Chouhan v. C.P. Joshi</i>	705a, 705c-d
a	2. (2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639, <i>Greater Mohali Area Development Authority v. Manju Jain</i>	706b-c
	3. (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415, <i>Sulochana Chandrakant Galande v. Pune Municipal Transport</i>	711c
	4. (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207, <i>State of Maharashtra v. Hindustan Construction Co. Ltd.</i>	705a
b	5. (2010) 2 SCC 733, <i>Sanghvi Reconditioners (P) Ltd. v. Union of India</i>	706b-c
	6. (2009) 17 SCC 657, <i>Vivek Automobiles Ltd. v. Indian Inc.</i>	709a
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c	9. CRA No. 564 of 2008 order dated 3-8-2009 (Bom), <i>National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad</i>	702d, 703f
	10. (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927, <i>Bachhuj Nahar v. Nilima Mandal</i>	705b-c
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46.	AIR 1957 SC 344, <i>Fruit & Vegetable Merchants Union v. Delhi Improvement Trust</i>	711b c
47.	AIR 1953 SC 235, <i>Trojan & Co. v. Nagappa Chettiar</i>	705a

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.— This appeal has been preferred against the judgment and order dated 3-8-2009 in *National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*¹ passed by the High Court of Judicature of Bombay affirming the judgment and order of the Small Causes Appellate Court dated 14-8-2008 in Appeal No. 627 of 2006 by which the appellate court has affirmed the judgment and decree dated 5-8-2006 in TE & R Suit No. 311/326 of 2001 passed by the Court of Small Causes at Bombay.

Facts

2. The suit premises belongs to the trust run by the respondents, Nareshkumar Badrikumar Jagad and others. Shri Damodar Dass Tapi Dass and Shri Daya Bhai Tapidas executed a lease deed dated 11-3-1893 in respect of the suit premises admeasuring 12118 sq yd bearing Plot No. 9 in Survey No. 73 of Lower Parel Division, N.M. Joshi Marg, Chinchpokli, Mumbai 400 011, in favour of a company named Hope Mills Ltd. for a period of 99 years commencing from 22-10-1891. The lease so executed was to expire on 21-10-1990. The original owners transferred and conveyed the suit property in favour of one Harichand Roopchand and Ratan Bai on 22-2-1907. Thereafter, the suit property came to be vested in and owned by a public charitable trust, namely, Harichand Roopchand Charity Trust (hereinafter called as "the Trust"). The leasehold rights in respect of the suit property stood transferred to Prospect Mills Ltd. and, thereafter to Diamond Spinning & Weaving Co. Pvt. Ltd. and, ultimately, vide a lease indenture dated 25-10-1926 to Toyo Poddar Cotton Mills Ltd. (hereinafter called "the Poddar Mills").

¹ CRA No. 564 of 2008 order dated 3-8-2009 (Bom)



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3. The Textile Undertakings (Taking Over of Management) Act, 1983
 a (hereinafter called “the 1983 Act”) was enacted by Parliament in order to take over the management of 13 textile undertakings including the Poddar Mills pending their nationalisation. The lease granted in favour of the Poddar Mills expired by efflux of time on 22-10-1990. Thus, the said Poddar Mills continued as a tenant by holding over the suit premises. The Trust issued a legal notice dated 2-12-1994 to the National Textile Corporation (hereinafter
 b called as “the appellant”), terminating its tenancy qua the suit premises. Parliament enacted the Textile Undertakings (Nationalisation) Act, 1995 (hereinafter called “the 1995 Act”).
4. The Trust filed an eviction suit against the appellant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called “the 1947 Act”). The 1947 Act stood repealed
 c by the Maharashtra Rent Control Act, 1999 (hereinafter called “the 1999 Act”). The respondent Trust issued a notice for terminating the tenancy of the appellant vide notice dated 26-9-2000. The respondent-plaintiffs after the withdrawal of the suit filed under the 1947 Act, filed a fresh suit in the Small Cause Court at Bombay seeking eviction of the appellant and for a decree of mesne profits on 20-4-2001.
- d 5. The appellant filed the written statement denying the pleas taken by the respondent-plaintiffs. The suit was decreed in favour of the respondent-plaintiffs vide judgment and decree dated 5-8-2006 by which the appellant was directed to hand over vacant and peaceful possession of the suit premises to the respondents within four months.
- e 6. Being aggrieved, the appellant preferred Appeal No. 627 of 2006 to the Division Bench of the Small Cause Court at Bombay on 13-11-2006 which was dismissed by the appellate court by affirming the judgment and decree of the trial court vide judgment and decree dated 14-8-2008. The appellant preferred civil revision before the High Court of Bombay, which has been dismissed vide the impugned judgment and order dated 3-8-2009¹. Hence, this appeal.
- f 7. Shri Parag P. Tripathi, learned Additional Solicitor General, appearing for the appellant has submitted that the judgments and decrees of the courts below have to be set aside as none of the courts below has taken into consideration the effect of the provisions of the 1995 Act by virtue of which the textile undertaking stood absolutely vested in the Central Government and further vested in the appellant. As on the expiry of the lease of 99 years
 g on 22-10-1990, the 1947 Act was in force, the then tenant, Poddar Mills became the statutory tenant. Such tenancy rights stood vested absolutely in the Central Government on the commencement of the 1995 Act by operation of law. The appellant stepped in the shoes of the Central Government merely as an agent, thus, the Central Government remained the tenant. The Central
 h Government continued to be a tenant in the suit premises and thus, would be protected in terms of Section 3(1)(a) of the 1999 Act being premises let out



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to the Government. The courts below failed to consider this vital legal issue. The suit filed by the respondents was not maintainable. The judgments and decrees of the courts below are liable to be set aside.

8. Per contra, Shri Mukul Rohatgi, learned Senior Counsel appearing for the respondents, submitted that it is not permissible for the court to travel beyond the pleadings. No evidence can be led on an issue in respect of which proper pleadings have not been taken. Findings of fact cannot be recorded on a issue on facts in respect of which no factual foundation has been laid. The appellant had never raised the issue before the courts below that the Central Government was the tenant and it was holding the premises merely as an agent. In the written statement filed by the appellants, no reference was made to the provisions of the 1995 Act. Even otherwise, the tenancy rights which had vested in the Central Government, stood vested immediately, by operation of law, in the appellant, a public sector undertaking as well as the public limited company having a paid-up share capital of more than rupees one crore, thus the appellant has no protection of the 1999 Act.

9. As the said provisions of the 1999 Act are not attracted in the instant case, the suit for eviction was filed before the Small Cause Court at Bombay. All the issues raised in the plaint have been adjudicated by the three courts. The power of the Revisional Court, in view of the provisions of Section 115 of the Code of Civil Procedure, 1908 (hereinafter called as "CPC"), remains very limited after the Amendment Act, 2002, w.e.f. 1-7-2002. Being the fourth court, in exercise of its power under Article 136 of the Constitution, this Court should not entertain the appeal. The appeal lacks merit and is liable to be dismissed.

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

11. In the instant case, no reference had ever been made by the appellant to the effect of the provisions of the 1995 Act before the trial court while filing the written submissions; neither any issue has been framed; nor arguments had been advanced in regard to the same; this issue has not been agitated either before the appellate court or the Revisional Court. Before us, an application has been filed to urge the additional grounds regarding the application of the 1995 Act without seeking amendment to the pleadings (WS).

12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide

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*Trojan & Co. v. Nagappa Chettiar*², *State of Maharashtra v. Hindustan Construction Co. Ltd.*³ and *Kalyan Singh Chouhan v. C.P. Joshi*⁴.)

13. In *Ram Sarup Gupta v. Bishun Narain Inter College*⁵ this Court held as under: (SCC p. 562, para 6)

“6. ... in the absence of pleading, evidence, if any, produced by the parties cannot be considered. ... no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.”

Similar view has been reiterated in *Bachhaj Nahar v. Nilima Mandal*⁶.

14. In *Kashi Nath v. Jaganath*⁷ (SCC p. 745, para 17) this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. Same remains the object for framing the issues under Order 14 CPC and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide *Biswanath Agarwalla v. Sabitri Bera*⁸ and *Kalyan Singh Chouhan*⁴.)

15. In *Syed and Co. v. State of J&K*⁹ this Court held as under: (SCC pp. 423-24, paras 7-8)

“7. ... Without specific pleadings in that regard, evidence could not be led in since it is a settled principle of law that no amount of evidence can be looked unless there is a pleading.

8. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible.”

16. In *Chinta Lingam v. Govt. of India*¹⁰ this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

17. In *J. Jermons v. Aliammal*¹¹ while dealing with a similar issue, this Court held as under: (SCC p. 398, paras 31-32)

“31. ... there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is necessary to amend the pleadings. ...

2 AIR 1953 SC 235

3 (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299

4 (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127

5 (1987) 2 SCC 555 : AIR 1987 SC 1242

6 (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927 : AIR 2009 SC 1103

7 (2003) 8 SCC 740

8 (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695

9 1995 Supp (4) SCC 422

10 (1970) 3 SCC 768 : AIR 1971 SC 474

11 (1999) 7 SCC 382

32. ... The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."

18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same. a

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See *Sanghvi Reconditioners (P) Ltd. v. Union of India*¹² and *Greater Mohali Area Development Authority v. Manju Jain*¹³.] b

20. The questions do arise as to whether in the facts and circumstances of this case the Government is a tenant or the appellant can be termed as the "Government" or "government department" or "agent" of the Central Government in the context of the 1999 Act. c

21. The Government loosely means the body of persons authorised to administer the affairs of, or to govern, a State. It commands and its decision becomes binding upon the members of the society. The Government includes, both the Central Government as well as the State Government. The Government is impersonal in character having three independent functionaries as its branches. It performs regal and sovereign functions, which are not alienable to any other person e.g. defence, security, currency, etc. The Government means a group of people responsible for governing the country. It consists of the activities, methods and principles involved in governing a country or other political unit. d

22. The Government is a body that governs and exercises control by issuing directions and is not governed by any other agency. It is a body politic that formulates policies and the laws by which a civil society is controlled. It is a political concept formulated to rule the nation. It is not a profit and loss establishment. e

"12. ... From the legal point of view, the Government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions."* f

23. Thus, government department means something purely fundamental i.e. relating to a particular Government or to the practice of governing a country. It has different wings. However, the expression "Government" may be required to be interpreted in the context used in a particular statute. The expression denotes the executive and not the legislature. (Vide *State of* g

12 (2010) 2 SCC 733 : AIR 2010 SC 1089

13 (2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817 h

* Ed.: As observed in *Pashupati Nath Sukul v. Nem Chandra Jain*, (1984) 2 SCC 404, p. 412, para 12 : AIR 1984 SC 399

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*Rajasthan v. Sripal Jain*¹⁴, *Pashupati Nath Sukul v. Nem Chandra Jain*¹⁵, *R.S. Nayak v. A.R. Antulay*¹⁶ and *V.S. Mallimath v. Union of India*¹⁷.)

24. To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various sections. To carry out the commercial activities by the State, the corporations have been established by the enactment of statutes and the “power to charter corporations as incidental to or in aid of governmental functions”. Such corporations would ex-hypothesis be agencies of the Government. (Vide *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*¹⁸, SCC p. 450, para 84 and *Ramana Dayaram Shetty v. International Airport Authority of India*¹⁹, SCC p. 506, para 13.)

25. Banks and financial institutions carrying out financial transactions, are independent to do business subject to the regulatory laws made by the legislature. They are not under the direct executive control of the Government. They are profit and loss earning organisations coupled with all connected financial and economic activities. They are a body corporate with a limited role to play and do not “govern” people as understood by governance. (See *Federal Bank Ltd. v. Sagar Thomas*²⁰).

26. In *State of Punjab v. Raja Ram*²¹, this Court considered the provisions of the Food Corporation Act, 1964 and held that Food Corporation of India was not a government department but a government company. The Court observed: (SCC p. 69, para 9)

“9. ... A government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party.”

(See also *State of Bihar v. Union of India*²²; *S.S. Dhanoa v. MCD*²³; *K. Jayamohan v. State of Kerala*²⁴; *Hindustan Steel Works Construction Ltd.*

14 AIR 1963 SC 1323 : (1963) 2 Cri LJ 347

15 (1984) 2 SCC 404 : AIR 1984 SC 399

16 (1984) 2 SCC 183 : 1984 SCC (Cri) 172 : AIR 1984 SC 684

17 (2001) 4 SCC 31 : 2001 SCC (L&S) 629 : AIR 2001 SC 1455

18 (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331

19 (1979) 3 SCC 489 : AIR 1979 SC 1628

20 (2003) 10 SCC 733 : AIR 2003 SC 4325

21 (1981) 2 SCC 66 : AIR 1981 SC 1694

22 (1970) 1 SCC 67 : AIR 1970 SC 1446

23 (1981) 3 SCC 431 : 1982 SCC (L&S) 6 : 1981 SCC (Cri) 733 : AIR 1981 SC 1395

24 (1997) 5 SCC 170 : 1997 SCC (L&S) 1140



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Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

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v. *State of Kerala*²⁵; *Mohd. Hadi Raja v. State of Bihar*²⁶ and *State v. Kulwant Singh*²⁷.)

27. In *Food Corpn. of India v. Municipal Committee, Jalalabad*²⁸ this Court considered the case of imposition of house tax under the provisions of the Punjab Municipalities Act, 1911 and held that Food Corporation of India was a government company and not a government department—a distinct entity from the Central Government. Thus, was not entitled to exemption from tax under Article 285 of the Constitution. While deciding the said case, reliance had been placed by the Court on its earlier judgment in *Electronics Corpn. of India Ltd. v. Govt. of A.P. (Deptt. of Revenue)*²⁹.

28. In *A.K. Bindal v. Union of India*³⁰ this Court clarified: (SCC p. 175, para 17)

“17. The legal position is that *identity of the government company remains distinct from the Government. The government company is not identified with the Union* but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government.”

(emphasis added)

29. In *Southern Roadways Ltd. v. S.M. Krishnan*³¹ this Court examined an issue whether the possession of the agent can be termed to be the possession of the principal for all purposes including the acquisition of title and held that agent who receives property from or for his principal, obtains no interest for himself in the property for the reason that possession of the agent is the possession of the principal and in view of the fiduciary relationship the agent cannot claim his own possession. While deciding the said case reliance was placed on various earlier judgments including *Chandrakantaben v. Vadilal Bapalal Modi*³², SCC p. 643, para 19.

30. In *Prem Nath Motors Ltd. v. Anurag Mittal*³³, this Court dealt with the relationship of agent and principal and held that in view of the provisions of Section 230 of the Contract Act, 1872 (hereinafter called “the Contract Act”), an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary. Where the relationship of principal and agent is

25 (1997) 5 SCC 171 : 1997 SCC (L&S) 1219 : AIR 1997 SC 2275

26 (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945

27 (2003) 9 SCC 193 : 2003 SCC (Cri) 1786 : AIR 2003 SC 1599

28 (1999) 6 SCC 74 : AIR 1999 SC 2573

29 (1999) 4 SCC 458 : AIR 1999 SC 1734

30 (2003) 5 SCC 163 : 2003 SCC (L&S) 620

31 (1989) 4 SCC 603 : AIR 1990 SC 673

32 (1989) 2 SCC 630 : AIR 1989 SC 1269

33 (2009) 16 SCC 274 : AIR 2009 SC 567

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a established the agent cannot be sued when the principal has been disclosed.
(See also *Vivek Automobiles Ltd. v. Indian Inc.*³⁴, SCC p. 659, para 8.)

31. Thus, it was made clear that suit does not lie against an agent where the principal is known or has been disclosed.

b 32. The appellant may be called the “agency” or “instrumentality” of the Central Government for a limited purpose, namely, to label it to be the “State” within the ambit of Article 12 of the Constitution. (See *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*³⁵.) However, even by a stretch of imagination, the appellant cannot be held to be an “agent” of the Central Government as defined under Section 182 of the Contract Act.

c 33. Thus, if the aforesaid settled legal principles are applied to the appellant, it becomes evident that the appellant is neither the Government nor the department of the Government, but a government company. The appellant cannot identify itself with the Central Government. The submission made by Mr Tripathi that the appellant is merely an agent of the Central Government is not worth consideration at all for the simple reason that rights *vested* in the appellant stood crystallised after being transferred by the Central Government. The appellant is being controlled by the provisions of the 1995 Act and not by the Central Government. Whereas an agent is merely an
d extended hand of the principal and cannot claim independent rights.

e 34. Sections 3(1)(a) & (b) provide for exemption from the application of the 1999 Act. This Court examined the validity of provisions of Section 3(1)(a) and (b) of the 1999 Act in *Saraswat Coop. Bank Ltd. v. State of Maharashtra*³⁶ and came to the conclusion that it was within the exclusive domain of the legislature to decide which section of tenants should be afforded protection on the basis of economic criteria. If a particular section of tenants is not protected considering their economic conditions it can be held to be a reasonable classification and making such distinction is valid. The exclusion of premises let or sub-let to banks or any public sector undertaking or any corporation established by or under any Central or State Act or foreign
f missions, international agencies, multinational companies and private and public limited companies having paid-up share capital of rupees one crore or more could not be held to be arbitrary. The Court further held that the provisions of Section 3(1)(b) are applicable to all the premises whether let out before or after the commencement of the 1999 Act.

g 35. In *Leelabai Gajanan Pansare v. Oriental Insurance Co. Ltd.*³⁷ this Court dealt with the same issue as to which of the categories of tenants have been excluded from the operation of the 1999 Act and held as under: (SCC pp. 756-57, paras 73-74)

34 (2009) 17 SCC 657

h 35 (2002) 5 SCC 111 : 2002 SCC (L&S) 633

36 (2006) 8 SCC 520

37 (2008) 9 SCC 720

“73. ... Therefore, we are of the view that on a plain meaning of the word ‘PSUs’ as understood by the legislature, it is clear that, India’s PSUs are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested (*see* the Income Tax Act, 1961). When the word PSU is mentioned in Section 3(1)(b), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. *They can afford to pay rents at the market rate.*”

74. ... we hold that Section 3(1)(b) clearly applies to different categories of tenants, all of whom are capable of paying rent at market rates. Multinational companies, international agencies, statutory corporations, *government companies, public sector companies* can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having a paid-up share capital of more than Rs 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entity mentioned in Section 3(1)(b) can afford to pay rent at the market rates.” (emphasis added)

(See also *D.C. Bhatia v. Union of India*³⁸.)

36. The case stands squarely covered by the judgment of this Court in *Leelabai Gajanan Pansare*³⁷ so far as the issue of exemption to the 1999 Act is concerned.

37. Sections 3(1) and (2) of the 1995 Act read as under:

“3. *Acquisition of rights of owners and vesting of the textile undertakings.*—(1) On the appointed day, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Every textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.” (emphasis added)

The aforesaid provisions require construction giving proper meaning to the expression “vesting”.

38. “Vesting” means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. “Vesting” in the general sense, means vesting in possession. However, “vesting” does not necessarily and always means possession but includes vesting of interest as well. “Vesting” may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word “vest” has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute



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a vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, *in title as well as duration*. Thus, the word “vest” clothes varied colours from the context and situation in which the word came to be used in the statute. The expression “vest” is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances. [Vide *Fruit & Vegetable Merchants Union v. Delli Improvement Trust*³⁹, *Maharaj Singh v. State of U.P.*⁴⁰, *Municipal Corpn. of Hyderabad v. P.N. Murthy*⁴¹, *Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu*⁴², *M. Ismail Faruqui v. Union of India*⁴³, SCC p. 404, para 41, *Govt. of A.P. v. Nizam, Hyderabad*⁴⁴, *K.V. Shivakumar v. Appropriate Authority*⁴⁵, *Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn.*⁴⁶ and *Sulochana Chandrakant Galande v. Pune Municipal Transport*⁴⁷.]

c 39. The 1995 Act has been brought for providing the acquisition and transfer of the rights, title and interest of the owners in respect of the textile undertakings. The respondents had not been the owner of the textile undertaking. They had rented out the premises to Poddar Mills and what had vested in the Central Government was only the right, title and interest of Poddar Mills and nothing else. Poddar Mills was having only right in tenancy
d in the suit premises. The owner had been defined in clause (g) of Section 2 of the 1995 Act, taking into consideration the expression in relation to a textile undertaking as a proprietor or lessee, or occupier of the textile company undertaking. It included even the Receiver and liquidator where the companies had gone under liquidation.

e 40. “Textile undertaking” has been defined in Section 2(m) which means undertaking specified in Column (2) of the First Schedule to the 1995 Act i.e. the textile undertakings, management of which had been taken over by the Central Government under the 1983 Act. The First Schedule included Poddar Mills at Sl. No. 9 and Poddar Mills had been paid compensation to the tune of Rs 7,46,30,000. Nothing has been paid so far as Respondent 1 is concerned.

f 41. Sub-section (6) of Section 4 of the 1995 Act provides that any suit, appeal or other proceedings of whatever nature in relation to any property which had vested in the Central Government under Section 3 on the appointed day, instituted or preferred by or against the textile company is

- g 39 AIR 1957 SC 344
40 (1977) 1 SCC 155 : AIR 1976 SC 2602
41 (1987) 1 SCC 568 : AIR 1987 SC 802
42 1991 Supp (2) SCC 228
43 (1994) 6 SCC 360 : AIR 1995 SC 605
44 (1996) 3 SCC 282
45 (2000) 3 SCC 485
h 46 (2001) 8 SCC 143 : AIR 2001 SC 3630
47 (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415

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pending, the same shall not abate or adversely affect the rights of the parties by reason of the transfer of textile undertaking. Thus, the commencement of the 1995 Act does not really affect even the pending cases. In view thereof, it is beyond our imagination as to how the 1995 Act would prejudice the cause of the respondents in the proceedings which arose subsequent to the commencement of this Act. a

42. It is not permissible for the appellant to canvass that the Central Government has any concern so far as the tenancy rights are concerned. Right vested in the Central Government stood transferred and vested in the appellant. Both are separate legal entities and are not synonymous. The appellant being neither the Government nor the government department cannot agitate that as it has been substituted in place of the Central Government, and acts merely as an agent of the Central Government, thus protection of the 1999 Act is available to it. The appellant cannot be permitted to say that though *all the rights vested in* it but it merely remained the agent of the Central Government. Acceptance of such a submission would require interpreting the expression “vesting” as holding on behalf of some other person. Such a meaning cannot be given to the expression “vesting”. b
c

43. It is a settled legal proposition that an agent cannot be sued where the principal is known. In the instant case, the appellant has not taken the plea before either of the courts below. In view of the provisions of Order 8 Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an “agent” of the Central Government, thus the suit against it was not maintainable. More so, whether *A* is an agent of *B* is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose. d
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44. Thus, in view of the above, we reach the inescapable conclusion that the appellant is not entitled for exemption under Section 3(1)(a) or 3(1)(b) of the 1999 Act. Nor can it claim the status of an “agent” of the Central Government. Submissions advanced on behalf of the appellant are preposterous. Facts and circumstances of the case do not warrant review of the impugned judgment. f

45. However, considering the nature of business of the appellant, it is in the interest of justice that the appellant be given time up to 31-12-2013, to vacate the premises. The appellant shall file a usual undertaking within four weeks from today to hand over peaceful and vacant possession to Respondent 1. g

46. With the aforesaid observations, the appeal stands dismissed.

CA No. 7449 of 2011 with CA No. 7450 of 2011

47. In view of our judgment pronounced today in Civil Appeal No. 7448 of 2011 (*National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*), these appeals also stand dismissed. However, the appellant is given time up to h



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31-12-2011 to vacate the premises. The appellant shall file a usual undertaking within four weeks from today to hand over peaceful and vacant possession to the respondent.

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(BEFORE DR. M.K. SHARMA AND ANIL R. DAVE, JJ.)

COMMISSIONER OF CUSTOMS,
CALCUTTA

.. Appellant;

Versus

G.C. JAIN AND ANOTHER

.. Respondents.

Civil Appeals Nos. 6334-35 of 2003[†] with No. 1757 of 2004,
decided on July 4, 2011

A. Customs — Exemptions — Duty Exemption Entitlement Certificate Scheme (DEEC Scheme)/Advance Licence Scheme/Advance Authorisation Scheme — Import of butyl acrylate monomer (BAM) as adhesive (which BAM became in its self-polymerised form) under advance licence — Permissibility — Whether BAM imported in its monomer form could be considered an “adhesive” which it became in its polymerised form — BAM, held, undergoes self-polymerisation* when it is exposed to air, light and heat on opening of container in which it is transported — Properties of BAM as an adhesive are to be determined with reference to its polymerised form which it ultimately assumes after opening container because material in packed condition is of no use — In chemical industry, polymerised butyl acrylate is understood as an adhesive — It is used as binder in leather industry — Manufacturer of BAM too had described use of product as adhesive and textile binder — Respondents therefore rightly claimed exemption of duty on BAM as an “adhesive” — Inference of misstatement or misdeclaration could not be drawn against them — DGFT Notifications/Circulars/Instructions — Customs Notifications Nos. 203/92 and 79/95 — Customs Tariff Act, 1975 — Sub-Heading 2916.12 (HS Code 2916.12) — Words and Phrases — “Adhesive” — Meaning of — Customs Act, 1962, S. 25(1) (Paras 17, 21, 24 and 25)

* [Ed.: “Polymer”, according to *Oxford Dictionary*, is “a substance which has a molecular structure built up chiefly or completely from a large number of similar units bonded together, e.g. many synthetic organic materials used as plastics and resins”, See <http://oxforddictionaries.com> visited on August 2, 2011. Polymerisation is a process through which polymer is formed.]

B. Customs — Exemptions — Duty Exemption Entitlement Certificate Scheme (DEEC Scheme) — “Material” required for manufacture of export product — What is — Held, term “material” encompasses not only material directly used or usable as such in manufacturing processes but also intermediates which could be used with some processing — Customs Act, 1962, S. 25(1) (Para 24)

[†] From the Judgment and Order dated 17-12-2002 of the Customs, Excise and Gold (Control) Appellate Tribunal, at Kolkata, in Appeals Nos. CRV-75 and 74 of 1999