BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE

M.A. 07 OF 2023 [WZ]
IN
O.A. 479 OF 2018

BETWEEN:

Mahendra P. Gaunekar

...APPLICANT

AND

The Goa Foundation and Others

...RESPONDENTS

AFFIDAVIT IN REPLY OF THE RESP. NO. 1

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PLACE: Mapusa, Goa

DATE: 11th July 2023

11.07.2023

Counsel for the Resp. No. 1

Adv. Om D'costa

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I, Dr. Claude Alvares, Secretary of the Resp. No. 1 organization, do hereby on solemn affirmation state and submit as under:

1. I state that I have read and understood the contents of the instant M.A. 07/2023, and am filing this preliminary affidavit in response thereto. At the outset, I state that I am not replying to each and every statement and submission made in the said Application, and nothing may be deemed to be admitted unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied and disputed specifically. This Respondent craves leave to file a detailed affidavit in reply if required, or if directed by this Hon'ble Tribunal.

2. The primary grievances of the Applicant as raised in this M.A. are twofold – namely,

   A. That 1.15 ha of land was wrongly identified as Forest by the report of the Deepshikha Sharma Committee, as accepted by the judgement and order dt. 18.08.2020; and

   B. That though the Sharma Report identified only part of the entire area of the Applicants plots as private forest, the Govt. of Goa in its notification dt. 22.09.22 has indicated the entire Sy. Nos of the Applicant as Private Forest.

Response of the R. 1 to Grievance A)

3. I submit that though this M.A. is styled as seeking 'modification/correction/review' of the judgment and order dated 18/08/2020 passed by this Hon'ble Tribunal in Original Application Number 479 of 2018 [*"impugned judgement"*], the present Application seeks a Review of the said judgment and order dt. 18.08.2020. The Answering Respondent raises 2 preliminary objections with regards to the instant Application for review.

Present Application is time barred and beyond limitation

4. The instant Application for Review is beyond the period of limitation and is time barred. In terms of Rule 22 of the NGT (Practice and Procedure) Rules, 2011, the time period for preferring a Review Application is 30 days from the date of the impugned order being passed.

5. As per the Applicant's pleadings, the Applicant became aware of the impugned judgement (dated 18.08.2020) after it was uploaded on the website of this Hon'ble Tribunal, although no date is specified. Even assuming that the date of knowledge was in September 2020, the present Application, filed on 28th March 2023, has been filed after a delay of more than 900 days.

6. Therefore, it is submitted that this Review Application is time barred in terms of Rule 22 of NGT (Practice and Procedure) Rules, 2011, and ought to be dismissed on this ground alone. The Tribunal has consistently passed such orders in similar cases such as *D.K. Joshi vs. Chief Secretary* and *Chandran Pillai vs. Union of India,* copies of which are enclosed herewith at **Annexure 1 Colly**.

No 'error apparent on the face of record' warranting Review

7. Notwithstanding the objection raised regarding limitation, the Answering Respondent submits that the instant Application for Review of the judgement dt. 18.08.2020 is not maintainable, as it does not make out any error apparent on the face of record.

8. In *Goel Ganga Developers Pvt. Ltd. vs. Union of India, (2018) 18 SCC 257*, the Hon'ble S.C. observed that "34. Section 19(4)(f) of the National Green Tribunal Act 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT."

9. In *Haryana State Industrial Development Corporation Limited v. Mawasi,(2012) 7 SCC 200*, the Hon'ble SC stated as under:

> "35. .... The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1

CPC or Section 22(3)(f) of the Act. To put it differently *an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision*." [*emphasis added*]

The two judgements cited hereinabove are enclosed as **Annexure 2 Colly.**

10. The impugned judgment dt. 18.08.2020 came to be passed by this Hon'ble Tribunal after considering a detailed report by the Deep Shikha Sharma Expert/Review Committee, which *inter alia* identified 1.15 *ha* of private forest on the plots belonging to the Applicant, i.e. Survey numbers 136/1 and 138/1 of Ella Village, confirming that the said area qualified as 'private forest' as per the formulated criteria.

11. Through the present Application, the Applicant disputes the findings of the Review Committee on merits, *inter alia* contending that the findings are erroneous in as far as the plots of the Applicant do not fulfill the criteria framed for the identification of Private Forest, and is effectively challenging the decision dt. 18.08.2020 on merits.

12. Applying the principles pertaining to Review Jurisdiction culled out by the Hon'ble S.C. in the above cited judgments, it is clear that the Applicant's grounds for challenge to the impugned judgment are not in the nature of an 'error apparent on the face of the record', but a challenge on the very merits of the Report of the Expert Committee – which the Answering Respondent submits is beyond the scope of the Review Jurisdiction of this Hon'ble Tribunal.

13. It is submitted that such a challenge to the judgment and order dt. 18.08.2020 as is raised by the Applicant herein can only be raised before the Hon'ble Supreme Court in exercise of the wide statutory right to appeal conferred under Section 22 of the NGT Act, 2010, in cases where any person is aggrieved by a decision of this Tribunal.

14. This Hon'ble Tribunal had occasion to consider a similar request for modification of the judgement dt. 18.08.2020 in M.A. No.s 15 & 16 of 2021 [enclosed at ***Ann. 3***], wherein it was held that:

> " 2. The State of Goa constituted Expert Committees for the purpose which identified 46.11 sq. Kms area as private forest to be regulated as a 'deemed forest' in terms of the directions of the Hon'ble Supreme Court. The identification was done by the Committee after following due process. The Tribunal disposed of the matter accordingly. The report of the Expert Committee was not under challenge. The Tribunal has not, thus, undertaken the exercise of adjudicating upon any individual parcel of area being forest or not. Thus, exercise of inclusion or exclusion cannot be undertaken by this Tribunal. If there is any deficiency in the report of the expert Committee, challenge thereto can be in any appropriate proceedings and not by way of modification of order of the Tribunal." [*emphasis added*]

15. It is also pertinent to point out that in a number of cases filed by individuals/companies from Goa, aggrieved by the judgment and order dt. 18.08.2020 on similar grounds as the present Applicant, (*i.e. that their plots did not meet the criteria for private forest and /or that they were not heard prior to the passing of the judgment*), the Hon'ble High Court of Bombay at Goa has refused to entertain any challenge to the judgement and order dt. 18.08.2020, owing to the remedy of statutory appeal available under S. 22 of the NGT

Act. The relevant paragraphs from the judgements are quoted below [*judgements enclosed at* ***Ann. 4 Colly***]:

i) *Pedro Januario Carlosbarreto vs. State of Goa, dt. 26.07.2021*

> "12. According to us, the NGT was monitoring the issue of the demarcation of private forests in the State of Goa for quite some time. It is in pursuance of the orders made by the NGT that the Committee came to be appointed. Ultimately, the NGT has accepted the report of the Committee. Therefore, if any party, has any grievance against the orders made by the NGT on this issue, then, it is only appropriate that such parties, avail of the statutory remedy of appeal provided under the NGT Act. Even Radha Krishan Industries (supra) holds that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This Rule of exhaustion of statutory remedies is a rule of policy, convenience, and discretion. In this case, the issue as to whether the Committee had to grant an individual hearing, the issue as to whether such hearing was sufficiently granted or not, whether the lands in question fulfilled the prescribed criteria for its determination as private forest, etc. are all matters which cannot be conveniently gone into by this Court in the exercise of its extraordinary jurisdiction. This is more so because the petitioners have an alternate remedy available to them. Even parties, at least prima facie, having similar grievances have already resorted to the alternative remedy provided under the NGT Act itself as was pointed out by both, the Learned Advocate General and Ms. Alvares, learned Advocate for respondent No. 4." [*emphasis added*]

ii) *Goa Foundation vs. State of Goa & Ors, dt. 28.09.2021*

> "13. As in Pedro Barreto (supra), even in the present petitions, the action impugned by the Petitioners is nothing but a fallout of orders and directions made by the NGT in the proceedings before it. The record indicates that the NGT was monitoring the issue of demarcating private forest in the State of Goa for quite some time. It is in pursuance of the orders made by the NGT the committee came to be appointed to give a report. Ultimately, it was the NGT that accepted the report of the committee. Therefore, if any party has any grievance of the orders made by the NGT appointing such committee and accepting the report made by such committee then, it is only appropriate that such party avails of statutory remedies available under the NGT Act."

16. Most of the petitioners in the above cited cases impugning the judgement dt. 18.08.2020 in O.A. 479/2018 eventually preferred Civil Appeals in the Hon'ble Supreme Court of India, where the Apex Court has issued notice and directed for status quo to be maintained in as far as some specific Survey No.s are concerned, and the matters are currently pending further adjudication. This position is also reflected in the notification of the Govt. of Goa dt. 22.09.2022 [*pg. 204*]. The Hon'ble S.C. vide an order dt. 01.02.2021 has already dismissed an Appeal filed by the Goa Govt. against the impugned judgement dt. 18.08.2020, which order is enclosed at **Annexure 5.**

17. For all these reasons, it is submitted that this Application for Review is not maintainable, as there is no 'error apparent on the face of the record' of the impugned judgment made out in the Application, and that any grievance with the judgement and order dt. 18.08.2020 ought to be raised by the Applicant only before the Hon'ble Supreme Court in Appeal under S. 22 of the NGT Act.

Response of the R. 1 to Grievance B)

18. In the impugned judgement dt. 18.08.2020, the Hon'ble N.G.T. accepted the Report of the Deepsikha Sharma Committee, and directed the State Govt. to notify the same. Accordingly, the Notification dt. 22.09.2022 [*pg. 204*] was issued by the Govt, showing entire Sy. Nos. as Private Forest in some cases, and 'Part' private forest in other cases, as per the Sharma Report.

19. The Applicant is aggrieved by the fact that as far as his plots are concerned, only a part of the area (*1.15 ha out of a combined 14.7 ha approx.*) was identified as Private Forest by the Sharma Report, whereas the notification dt. 22.09.2022, by failing to indicate the term 'part/(p)' along with the plots of the Applicant, seemingly identifies the entire area of the plots as Private Forest.

20. The Answering Respondent submits that any error or challenge to the notification dt. 22.09.2022 may not be within the jurisdiction of this Hon'ble Tribunal, but before other appropriate fora.

21. In any event, a conjoint reading of the Notification dt. 22.09.2022 along with the Deepshikha Report makes it clear that the extent of private forest identified in relation to the Applicants plots is unchanged, i.e. 1.15 Ha, as the final area identified by the Deepshika Sharma report at 46.11 sq kms remains unchanged in the Notification.

22. I solemnly declare and say that what has been stated in paragraphs 1(p), 2(p), 3(p), 4(p), 5(p), 8(p), 9(p), 10, 14(p), 15(p), 16(p), 18(p), 19(p), and 21 are true to the best of my knowledge and official documents/records, and what is stated in paragraphs 1(p), 2(p), 3(p), 4(p), 5(p), 6, 7, 8(p), 9(p), 11, 12, 13, 14(p), 15(p), 16(p), 17, 18(p), 19(p), and 20 are in the nature of

legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom, and the annexures enclosed are true copies of their respective originals.

Solemnly affirmed this at Mapusa, Goa,
this the 11th day of July, 2023

Deponent

Dr. Claude Alvares
REF:RE
2639/2023 11/07/2023

ANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

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NOTARY GOVT. OF GOA (INDIA)
Janardhan S. Parshekar Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025

VERIFICATION

I, Dr. Claude Alvares, Secretary of the Resp. No. 1 organization, do hereby verify that the contents of paras 1 to 22 of my above affidavit are true to my knowledge and belief, and that no part of it is false and nothing material has been concealed therefrom.

Verified on this the 11th day of
July 2023, at Mapusa, Goa

DEPONENT

Dr. Claude Alvares
REF:RE
2639/2023 11/07/2023

ANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

Janardhan S. Parshekar Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025
GOVT. OF GOA (INDIA)

2020 SCC OnLine NGT 1323

In the National Green Tribunal[†]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND S.P. WANGDI, MEMBER (JUDICIAL) AND NAGIN NANDA, EXPERT MEMBER)

D.K. Joshi ... Applicant(s);

Versus

Chief Secretary of U.P. and Others ... Respondent(s).

Review Application No. 09/2020 in Original Application No. 306/2016 (I.A. No. 74/2020)

Decided on March 4, 2020, [Date of Hearing: 04.03.2020]

ORDER

IN CHAMBER BY CIRCULATION

1. This review application has been taken up for disposal in terms of Rule 22(3) of the National Green Tribunal (Practices and Procedure) Rules, 2011 for disposal by circulation.

2. By the application review has been sought for of the order dated 23.08.2018 passed in O.A. No. 116/2014.

3. On perusal of the record, the application has been filed on 28.01.2020. Rule 22 (1) of the National Green Tribunal (Practices and Procedure) Rules, 2011 prescribes the period within which an application for review ought to be filed. For the sake of convenience, we may reproduce Rule 22(1) below:

> "*22. Application for review.- (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed*."

4. A bare reading of the provision would show that applications for review have to be peremptorily filed within 30 days from the date of receipt of copy of the order sought to be reviewed. No discretion has been vested upon the Tribunal to extend such period.

5. Admittedly, the Application is barred by limitation and is accompanied by I.A. No. 74/2020 seeking condonation of the delay in filing the review application. Since the delay cannot be condoned under Rule 22(1) of the National Green Tribunal (Practices and Procedure) Rules, 2011, the I.A. stands rejected.

6. Consequently, the review application also stands dismissed as being barred by limitation.

[†] Principal Bench at New Delhi

2020 SCC OnLine NGT 1322

In the National Green Tribunal[†]

(BEFORE S.P. WANGDI, MEMBER (JUDICIAL), K. RAMAKRISHNAN, MEMBER (JUDICIAL) AND NAGIN NANDA, EXPERT MEMBER)

Chandran Pillai N. and Another ... Applicant(s);

Versus

Union of India and Others ... Respondent(s).

Review Application No. 07/2020 (SZ) in Original Application No. 515/2018 (I.A. No. 50/2020 & I.A. No. 51/2020)

Decided on March 5, 2020, [Date of Hearing: 05.03.2020]

ORDER

IN CHAMBER BY CIRCULATION

1. This review application has been taken up for disposal in terms of Rule 22(3) of the National Green Tribunal (Practices and Procedure) Rules, 2011 for disposal by circulation.

2. By the application review has been sought for of the order dated 25.02.2019 passed in O.A. No. 515/2018 and O.A. No. 516/2018.

3. On perusal of the record, the application has been filed on 14.03.2019. Rule 22 (1) of the National Green Tribunal (Practices and Procedure) Rules, 2011 prescribes the period within which an application for review ought to be filed. For the sake of convenience, we may reproduce Rule 22(1) below:

> "*22. Application for review.- (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed*."

4. A bare reading of the provision would show that applications for review have to be peremptorily filed within 30 days from the date of receipt of copy of the order sought to be reviewed. No discretion has been vested upon the Tribunal to extend such period.

5. Admittedly, the Application has been filed with a delay of 199 days and is accompanied by I.A. No. 50/2020 seeking condonation of the delay. Since the delay cannot be condoned under Rule 22(1) of the National Green Tribunal (Practices and Procedure) Rules, 2011, the I.A. stands rejected.

6. Consequently, the review application also stands dismissed as being barred by limitation.

[†] Principal Bench at New Delhi

ANNEXURE 2 COLLY

(2018) 18 Supreme Court Cases 257

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of 2016 and 5157-58 of 2018†, decided on August 10, 2018

A. **Environment Law — Environmental Clearance/NoC/Environment Impact Assessment (EIA) — Specific Clearances — Development Projects — Environment Impact Assessment (EIA) Notification, 2006 — Construction in violation of the environmental clearance (EC), as in the present case, in violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment and Effect of — "Built-up area" under Notis. dt. 4-4-2011 and 14-9-2006 — Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of, for computation of "built-up area" for which EC is granted**

— Imposition of damages of Rs 100 crores or 10% of project cost, whichever was higher, for violation of environmental clearance in addition to Rs 5 crore damages imposed by NGT, instead of directing demolition — Detailed coercive directions issued to ensure deposit of these damages within six months

— Held, the concept of FSI or non-FSI may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC and both will have an equally deleterious effect on the environment — When EC is granted for a particular construction it includes both FSI and non-FSI areas — Held, the built-up area under the Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and the built-up area under the Noti. dt. 4-4-2011 means all covered area including basement and service areas

— EC dt. 4-4-2008 was granted to the project proponent for construction of built-up area 57,658.42 sq m, whereas the total construction raised by it was 1,00,002.25 sq m — Rejecting the contention of project proponent that while calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b) and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development Control Rules, 1982 were to be excluded, held, the construction raised by the project proponent was in violation of the environmental clearance granted to it — However, considering that the project proponent had already taken money and a large number of flats and shops had already been

† Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184 of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire* v. *Union of India* [National Green Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — "Built-up area" — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order**

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending**

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

D. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis**

— Rejecting the contention that damages should be assessed on the basis of "carbon footprint", held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

such data — Evidence Act, 1872 — S. 45 — Words and Phrases — "Carbon footprint" (Paras 59 to 63)

E. **Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4**

F. **Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

The original applicant filed an application before the National Green Tribunal ("NGT", for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws.

The case of the project proponent was that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the "built-up area". The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 ("DCR", for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

Held :

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area. (Para 16)

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

Notification dated 4-4-2011

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

Clarification dated 7-7-2017

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

Common Cause v. *Union of India*, (2017) 9 SCC 499, *relied on*

Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

Allegations made by the original applicant against various officials

The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302

Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

Northern India Caterers (India) Ltd. v. *Lt. Governor of Delhi*, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *referred to*

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

Malthesh Gudda Pooja v. *State of Karnataka*, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *relied on*

Malthesh Gudda Pooja v. *State of Karnataka*, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918, *referred to*

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45)

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954, *referred to*

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214, *referred to*

Is demolition the only answer?

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53)

The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

Whether the original applicant is entitled to special damages?

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4213, *partly reversed*

Tanaji Balasaheb Gambhire v. *Union of India*, 2018 SCC OnLine NGT 302, *reversed*

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Ranjit Kumar, R.P. Bhatt, Kavin Gulati and Jayant Bhushan, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Braj K. Mishra, Vijay Kumar, Rohit Gupta, Ms Aparna Jha, Ms Kriti Sondhi, Shriram P. Pingle, Ms Rashmi Dhongde, Nitin Lonkar, Ms Sonali Suryavanshi, Nilesh Bhandari, Ashok Jain, Gurmeet Singh Makker, Divya Prakash Pande, Salvador Santosh Rebello, Niraj Kumar, Rahul Garg, Ridhi Kackkar, Ranjesh Kr. Sinha, Gaurav Rawal, Mukesh Verma, Pawan Kr. Shukla, Ms Vasudha Zutshi, Yash Pal Dhingra, Kunal Cheema, Nishant Ramakantrao Katneshwarkar, Ninad Laud, Kush Chaturvedi, Ms Anshula Grover, Anjuman Tripathy, Somay Kapoor, Ms Priyashree Sharma, Parth Singh Chaudhary and Aman Verma, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine NGT 302, *Tanaji Balasaheb Gambhire* v. *Union of India* **(reversed)** 266*e-f*, 266*h*, 267*a*, 276*f*, 277*g-h*, 283*e-f*, 286*b-c*, 287*g-h*
2. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 273*g*
3. 2017 SCC OnLine NGT 1954, *Tanaji Gambhire* v. *Union of India* 281*d*, 281*d-e*
4. 2016 SCC OnLine NGT 4219, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
5. 2016 SCC OnLine NGT 4217, *Tanaji Balasaheb Gambhire* v. *Union of India* 281*c*
6. 2016 SCC OnLine NGT 4215, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b*
7. 2016 SCC OnLine NGT 4214, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*, 283*d-e*
8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire* v. *Union of India* **(partly reversed)** 265*e-f*, 266*e*, 266*e-f*, 267*a*, 275*a-b*, 275*c*, 275*f-g*, 276*a*, 283*c*, 284*d*, 287*g*, 288*a*, 288*b-c*
9. 2016 SCC OnLine NGT 4212, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
10. 2016 SCC OnLine NGT 4211, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
11. 2016 SCC OnLine NGT 4210, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
12. 2016 SCC OnLine NGT 4209, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*f-g*, 283*d-e*
13. 2016 SCC OnLine NGT 4208, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d*, 282*f-g*
14. 2016 SCC OnLine NGT 4207, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
15. 2016 SCC OnLine NGT 4206, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
16. 2016 SCC OnLine NGT 4205, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
17. 2016 SCC OnLine NGT 4204, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
18. 2016 SCC OnLine NGT 4203, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
19. 2016 SCC OnLine NGT 4202, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
20. 2016 SCC OnLine NGT 4201, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b*

21. 2016 SCC OnLine NGT 1330, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*e*, 282*e-f*
22. 2015 SCC OnLine NGT 838, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d-e*
23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a*
24. 2009 SCC OnLine Kar 919, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a-b*
25. 2009 SCC OnLine Kar 918, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*b-c*
26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* 278*g-h*

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as "the original applicant") before the National Green Tribunal ("NGT", for short) being Application No. 184 of 2015.

3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016[1] allowed the application in the following terms: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

> "*54.* For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:
>
> 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month.

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016.

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks."

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation ("PMC", for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018[2] and Direction 1 in the original order dated 27-9-2016[1] was modified and substituted as under: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

"*54.* …'1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.' "

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018[2], which we have allowed.

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016[1] as well as the order dated 8-1-2018[2] passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the "balance plot area" which in this case works out to 46,993.79 sq m. Out of this "balance plot area" 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving "net plot area" of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the "net plot area". We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

> "2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(*a*) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:"

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

"*Part A—Specific conditions*

I. Construction phase

* * *

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

* * *

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry."

Concept of "built-up area" under the Notification dated 14-9-2006

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term "built-up area". The case of the project proponent is that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the "built-up area". On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ("DCR", for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines "built-up area" as follows:

"**2.13.** ***Built-up area***.—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2."

Rule 2.39 defines "floor area ratio" as follows:

"**2.39.** ***Floor area ratio (FAR)***.—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

Note.—The term FAR is synonymous with floor space index (FSI)."

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

"**15.4.2.** In addition to Rules 15.4.1.1(*a*), (*b*) and (*c*) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(*a*) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

(*b*) Electric cabin or substation, watchman's booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(*c*) Projection as specifically exempted under these Rules;

(*d*) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

Note.—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

(*e*) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

(*f*) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(*g*) (*Deleted*);

(*h*) Sanitary block subject to provision of Rule 15.4.1(*a*) and built-up area not more than 4 sq m."

14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 in addition to the

areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being "Category A" and "Category B". "Category A" projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form "Category B" of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of "Category B" into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

"(1)	(2)	(3)	(4)	(5)
8		***Building/Construction projects/Area development projects and townships***		
(*a*)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(*b*)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(*b*) shall be appraised as Category B-1."

16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(*a*), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built-up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area.

17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

Notification of 4-4-2011

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(*a*) have been replaced and substituted as under:

> "The built-up area for the purpose of this Notification is defined as 'the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects'."

This notification clearly defines "built-up area" as all constructed area including basement and service areas without any exception.

19. The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

Clarification dated 7-7-2017

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III
Government of India
Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)
******

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(*a*) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-
(Dr Ashish Kumar)
Joint Director Ph: 011-24695474
Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum.

23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to "built-up area" was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause* v. *Union of India*[3]. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

3 (2017) 9 SCC 499

25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

Environmental clearance dated 20-11-2017

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

> "(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m^2 as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m^2 which includes the area of previous EC (dated 4-4-2008) 57,658.42 m^2 and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m^2. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m^2. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States."

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016[1]. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

29. NGT in its order dated 27-9-2016[1], has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

30. The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016[1] in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

32. We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016[1], NGT held as follows: (*Tanaji Balaseheb case*[1], SCC OnLine NGT para 42)

> "42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016."

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire* v. *Union of India*[2]**

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 2018 SCC OnLine NGT 302

the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

> "**1.** ***Application for review of judgment.***—(1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
>
> * * *
>
> **5.** ***Application for review in court consisting of two or more Judges.***— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment[2] in review was pronounced by NGT.

38. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"[4]. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

4 *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja* v. *State of Karnataka*[5]. In that case, a writ appeal was disposed[6] of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed[7] and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

> "*18.* Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473
6 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 919
7 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

> 'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions … In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

45. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

46. We may add that on 21-12-2016[8], the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017[9], the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*[9], SCC OnLine NGT)

> "Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected."

47. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

48. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

8 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4217
9 *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954

of damages to be imposed on the basis of "carbon footprint" relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016[10] and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016[11], 5-4-2016[12], 18-4-2016[13], 22-4-2016[14], 2-5-2016[15] and 5-5-2016[16] before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016[17] on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015[18] had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016[19] directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016[19] before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016[17]. On 23-5-2016[20], the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4201
11 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204
12 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205
13 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206
14 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219
15 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203
16 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207
17 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208
18 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838
19 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209

In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

51. The original applicant sought time to file counter-affidavit. The matter was adjourned[21] to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016[22], the matter was got adjourned to 2-8-2016 on which date[23] some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016[24], 19-8-2016[25] and 24-8-2016[26] when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016[1]. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016[20] or on 24-8-2016[26] on which dates the original application was reserved for orders.

52. We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

Is demolition the only answer?

53. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

21 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215
22 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210
23 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211
24 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202
25 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212
26 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209
2 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016[1] that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

57. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

Quantification of damages

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

58.1. The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

58.3. Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

Carbon footprint

59. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

60. In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

61. The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

62. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (*1*) use of groundwater; (*2*) reduction of cultural centre space; (*3*) construction of basements, etc.

63. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

2 2018 SCC OnLine NGT 302

and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

65. Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

Findings and directions

66. We summarise our findings and directions as follows:

66.1. That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

66.2. Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

66.3. The communication dated 7-7-2017 is totally illegal and accordingly quashed.

66.4. The original application cannot be treated as a public interest litigation.

66.5. We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

66.6. That the order dated 27-9-2016[1] of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018[2] is held to be totally illegal and is accordingly set aside.

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

27. Normally, the parties are the best judge for deciding as to who will be the person capable and competent to adjudicate the disputes raised considering his experience, knowledge and competence in a particular trade or business to which the disputes relate and taking these factors into account the parties have appointed Mr Manabu Nonoguchi as an arbitrator, in case a dispute arises between the parties. Unfortunately, for some reason, the named arbitrator refused to act as an arbitrator. However, during the pendency of these arbitration applications, IA supported by affidavit has been filed stating that the named arbitrator is ready and willing to take up the arbitration. Considering this fact, it would be appropriate if Mr Manabu Nonoguchi, Area Manager, Sales Department, Murata Machinery Ltd., Textile Machinery Department, Osaka 5410041, Japan is appointed as an arbitrator to adjudicate upon the disputes arising between the parties. I, accordingly, appoint him as the arbitrator. He shall take up the steps in accordance with law and shall make all possible endeavours to decide the disputes expeditiously.

28. Arbitration Applications Nos. 8 and 9 of 2005 stand disposed of.

(2012) 7 Supreme Court Cases 200

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED .. Petitioner;

Versus

MAWASI AND OTHERS .. Respondents.

Review Petitions (C) Nos. 235-578 of 2011 in Civil Appeals Nos. 6525, 6527-35, 6537-41, 6546, 6548, 6550, 6552-54, 6556-85, 6587-88, 6590-603, 6605-616, 6619-33, 6635-59, 6664-67, 6747-57, 6823-27, 6831, 6836, 6852-55, 7723-25 of 2009, 53, 1370, 2475, 4212-15, 4218, 4220-34, 6871-986, 6988-97, 7002-7048 of 2010 with IAs Nos. 2066-67, IA No. 3 in CA No. 6515 of 2009, Contempt Petition (C) No. 51 of 2011 in CA No. 6526 of 2009, Contempt Petition (C) No. 52 of 2011 in CA No. 6537 of 2009 and Contempt Petition (C) No. 89 of 2011 in CA No. 6854 of 2009, decided on July 2, 2012

A. **Land Acquisition Act, 1894 — Ss. 23 and 54 — Review of judgment — Scope of — Error apparent on face of record — Absence of — Roving inquiry or de novo hearing in guise of review — Impermissibility — Supreme Court's judgment fixing market value of acquired land on basis of a particular sale transaction — Review of — Sought by State Development Authority on ground that said sale transaction was not a bona fide transaction as vendor and vendee companies had common management and vendee had paid high price with certain oblique motive — Documents produced with review petition to substantiate the said assertion — But, no explanation given as to why such documents were not produced before the courts below**

— Held, said omission coupled with fact that review petitioner's assertion as to commonality of management of two companies was ex facie incorrect, led to an irresistible inference that judgment concerned did not suffer from any error apparent on face of record warranting its review — Petitioner State Authority could not be permitted to seek de novo hearing of matter in guise of review — Roving inquiries into validity of sale transaction could not be made while deciding review petition — Review petitions dismissed with costs of Rs 25,000 to be paid in each case — Civil Procedure Code, 1908 — Or. 47 R. 1 — Supreme Court Rules, 1966 — Or. 40 — Constitution of India, Arts. 137 and 300-A

B. **Practice and Procedure — State as a Litigant/Party — Review petitions filed on untenable grounds — Dismissed with costs of Rs 25,000 to be paid in each case — Constitution of India — Art. 137 — Costs**

C. **Practice and Procedure — Review — Power of review — Is a creature of statute — Said power cannot be exercised unless expressly provided for by law and only to the extent so provided — Civil Procedure Code, 1908 — Or. 47 R. 1 — Supreme Court Rules, 1966 — Or. 40 — Administrative Law — Administrative appeal, review or revision**

The instant case pertained to the determination of compensation to be granted to the landowners for acquisition of their land under the Land Acquisition Act, 1894. The Supreme Court vide its judgment dated 17-8-2010 passed in *Pran Sukh*, (2010) 11 SCC 175, opined that the High Court concerned did not commit any error in relying upon the sale transaction i.e. Ext. P-1 for the purpose of fixing the market value of the acquired land. Thereafter, review petitions were filed on the ground that the determination of market value needed reconsideration because the sale deed, Ext. P-1 on which reliance was placed by the High Court and the Supreme Court was not a genuine transaction as the vendor and the vendee companies were controlled by the same management and the high price mentioned in the sale deed was manipulated with an oblique motive. It was contended that the said fact was brought to the notice of the officers concerned only after the disposal of the appeals by the Supreme Court. The Supreme Court declined to entertain the said petitions by observing that the petitioner had not produced any material to substantiate its assertion. Soon thereafter, the present review petitions supported with certain documents were filed reiterating the grounds mentioned in earlier review petitions.

Dismissing the review petitions with costs, the Supreme Court

Held :

The power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 of the Constitution of India empowers the Supreme Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The rules framed by the Supreme Court under that article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 CPC. (Para 26)

The review petitioner Development Authority has not offered any explanation as to why it did not lead any evidence before the Reference Court to show that the sale deed i.e. Ext. P-1 (the sale transaction said to be not bona fide) was not a bona fide transaction and the vendee had paid an unusually high price for extraneous reasons. The parties had produced several sale deeds before the Reference Court, the majority of which revealed that the price of similar parcels of land varied from Rs 6 to 7 lakhs per acre. A reading of the sale deeds would have prompted any person of ordinary prudence to make an enquiry as to why vide the impugned sale Ext. P-1 (executed in 1994) the vendee had paid more than Rs 2,42,00,000 for 12 acres of land i.e. about Rs 20 lakhs per acre which had been purchased by the vendor only a year back at an average price of Rs 6 lakhs per acre. However, the fact of the matter is that neither the advocate for the petitioner nor its officers/officials, who were dealing with the cases made any attempt to lead such evidence before the Reference Court. This may be because they were aware of the fact that at least in two other cases such parcels of land had been sold in 1993 for more than Rs 13 lakhs and Rs 15 lakhs per acre and in 1996, a sale deed was executed in respect of the land of Village Naharpur Kasan at the rate of Rs 25 lakhs per acre. The said omission coupled with the fact that the petitioner's assertion about commonality of the management of two companies (vendor and vendee in sale Ext P-1) is ex facie incorrect, leads to an irresistible inference that the judgment dated 17-8-2010 does not suffer from any error apparent on the face of the record warranting its review. Surely, in the guise of seeking review, the petitioner cannot ask for de novo hearing of the appeals. While deciding the review petitions, the Supreme Court cannot make roving inquiries into the validity of the transaction involving the sale of land or declare the same to be invalid by assuming that the vendee had paid higher price to take benefit of an anticipated joint venture agreement with a foreign company.

(Paras 36 to 38)

In the result, the review petitions are dismissed. The petitioner shall pay costs of Rs 25,000 in each case, which shall be deposited with the Supreme Court Legal Services Committee within a period of three months. The petitioner State Development Authority is directed to pay the balance amount of compensation to the landowners and/or their legal representatives along with other statutory benefits within three months. (Para 39)

Haryana State Industrial Development Corpn. v. *Pran Sukh*, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394, *affirmed*

S. Nagaraj v. *State of Karnataka*, 1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448; *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius*, AIR 1954 SC 526; *Thungabhadra Industries Ltd.* v. *Govt. of A.P.*, AIR 1964 SC 1372 : (1964) 5 SCR 174; *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma*, (1979) 4 SCC 389; *Meera Bhanja* v. *Nirmala Kumari Choudhury*, (1995) 1 SCC 170; *Parsion Devi* v. *Sumitri Devi*, (1997) 8 SCC 715; *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056; *Haridas Das* v. *Usha Rani Banik*, (2006) 4 SCC 78; *State of W.B.* v. *Kamal Sengupta*, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735, *relied on*

Pran Sukh v. *State of Haryana*, RFA No. 2699 of 2003, decided on 19-5-2006 (P&H); *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2012) 7 SCC 721, *referred to*

Raja Prithwi Chand Lal Choudhury v. *Sukhraj Rai*, AIR 1941 FC 1; *Rajunder Narain Rae* v. *Bijai Govind Sing*, (1837-41) 2 MIA 181 : (1836) 1 Moo PC 117; *Chhajju Ram* v. *Neki*, (1921-22) 49 IA 144 : AIR 1922 PC 112; *Bisheshwar Pratap Sahi* v. *Parath Nath*, (1933-34) 61 IA 378 : AIR 1934 PC 213; *Hari Sankar Pal* v. *Anath Nath Mitter*, AIR 1949 FC 106; *Satyanarayan Laxminarayan Hegde* v. *Mallikarjun Bhavanappa Tirumale*, AIR 1960 SC 137; *Opera House Creations (P) Ltd.* v. *State of Haryana*, RFA No. 2587 of 2004, decided on 5-9-2008 (P&H); *Haryana State Industrial Development Corpn.* v. *Mawasi*, (2012) 7 SCC 737; *Manesar Industries Welfare Assn.* v. *State of Haryana*, WP No. 6527 of 2010, order dated 8-4-2010 (P&H), *cited*

W-D/50100/CV

Advocates who appeared in this case :

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Chronological list of cases cited ***on page(s)***

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2. (2012) 7 SCC 721, *Haryana State Industrial Development Corpn.* v. *Pran Sukh* 208*e*, 217*a*, 217*e-f*, 217*f-g*, 218*d*
3. (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394, *Haryana State Industrial Development Corpn.* v. *Pran Sukh* 204*c*, 207*c*, 207*f*, 208*c*, 208*f-g*, 209*a-b*, 209*c-d*, 209*h*, 213*f-g*, 217*d-e*, 217*f-g*, 224*d*
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18. AIR 1941 FC 1, *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai* 219*c*, 219*e*
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20. (1921-22) 49 IA 144 : AIR 1922 PC 112, *Chhajju Ram* v. *Neki* 221*a-b*
21. (1837-41) 2 MIA 181 : (1836) 1 Moo PC 117, *Rajunder Narain Rae* v. *Bijai Govind Sing* 219*c*, 219*e-f*, 219*f*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Undeterred by the dismissal of two similar petitions, Haryana State Industrial Development Corporation (HSIDC) has filed these petitions for review of the judgment dated 17-8-2010 passed in *Haryana State Industrial Development Corpn.* v. *Pran Sukh*[1] and batch whereby the appeals filed by it against the judgments[2] of the learned Single Judge of the Punjab and Haryana High Court were dismissed, those filed by the landowners were allowed and a direction was given for payment of compensation at the rate of Rs 20 lakhs per acre with all the statutory benefits.

2. The facts necessary for deciding whether the petitioner has succeeded in making out a case for review are encapsulated below: for the purpose of setting up an Industrial Model Township at Manesar, District Gurgaon, the Government of Haryana acquired large chunks of land. By Notification dated 30-4-1994 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act"), the State Government proposed the acquisition of 256 acres 3 kanals and 17 marlas of land situated in Village Manesar. The declaration under Section 6(1) was published on 30-3-1995. The Land Acquisition Collector passed award dated 28-3-1997 and fixed the market value of the acquired land at the rate of Rs 3,67,400 per acre. The Additional District Judge, Gurgaon (hereinafter described as "the Reference Court") to whom the reference was made under Section 18 considered the pleadings and evidence of the parties and determined the amount of compensation by dividing the acquired land into two blocks i.e. A and B. For the land comprised in Block A which fell within 500 yd of National Highway No. 8, the Reference Court fixed the amount of compensation at the rate of Rs 6,57,994.13 per acre. The remaining land was included in Block B and the amount of compensation was fixed at Rs 3,91,196.97 per acre.

3. By another Notification dated 15-11-1994 issued under Section 4(1), the State Government proposed the acquisition of 1490 acres 3 kanals and 17 marlas of land situated in Villages Manesar, Naharpur Kasan, Khoh and Kasan. The declaration issued under Section 6(1) was published on

1 (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394

2 *Pran Sukh* v. *State of Haryana*, RFA No. 2699 of 2003, decided on 19-5-2006 (P&H)

10-11-1995. By an award dated 3-4-1997, the Land Acquisition Collector fixed the market value at the rate of Rs 4,13,600 per acre. The Reference Court divided the land into two blocks. For the land comprised in Block A, the Reference Court determined the amount of compensation at the rate of Rs 6,89,333 per acre. The remaining land was included in Block B and no enhancement was granted in the compensation determined by the Land Acquisition Collector.

4. Before proceeding further, we may mention that in support of their claim for award of higher compensation, the landowners had produced 13 sale deeds which were marked Exts. P-1 to P-13. Of these, Ext. P-1 dated 16-9-1994 was in respect of 12 acres of land situated in Village Naharpur Kasan, which was sold by M/s Heritage Furniture (P) Ltd. to M/s Duracell India (P) Ltd. and was proved by Shri Albel Singh, authorised signatory of M/s Heritage Furniture (P) Ltd. The landowners also produced copy of massavi chakbandi of Village Khoh (Ext. P-14) and aks shajras of the four villages (Exts. P-15 to P-18). On behalf of the State Government, Shri Arun Kumar Pandey, Manager, HSIDC was examined as RW-1 and sale deeds marked Exts. R-1 to R-15 were produced along with other documents. The Reference Court did consider Ext. P-1 but did not rely upon the same for the purpose of determining the amount of compensation.

5. The appeals filed by the landowners who were affected by the Notification dated 15-11-1994 were disposed of by the learned Single Judge of the High Court vide judgment dated 19-5-2006 and market value of the entire acquired land was fixed at Rs 15 lakhs per acre.

6. The learned Single Judge referred to the sale deed, Ext. P-1 and opined that the same reflected the market value which a willing buyer would have paid to a willing seller. The reasons assigned by the learned Single Judge for arriving at this conclusion are extracted below:

> "The claimants have produced various sale instances to prove their claim. The sale deed, Ext. P-l is dated 16-9-1994 whereby 96 kanals and 13 marlas (more than 12 acres) of land in Village Naharpur Kasan was sold by the owner, M/s Heritage Furniture (P) Ltd. to M/s Duracell India (P) Ltd. for a sale consideration of Rs 2,42,00,000, reflecting the average price of Rs 20,03,103 per acre. The aforesaid sale instance has been proved by the statement of one Albel Singh, PW l, who at the relevant time was the authorised signatory of the seller Company, M/s Heritage Furniture (P) Ltd. The aforesaid witness has clearly proved that the said transaction was genuinely entered into between the two companies and the entire payment was made through bank drafts. The factum of the payment having been made through bank drafts is also reflected in the sale deed, Ext. P-l. Some other sale instances relied upon by the claimants are Exts. P-2, P-3, P-4, P-7 and P-8. Vide Ext. P-2 land measuring 9 kanals was sold on 4-6-1994 for consideration of Rs 7,87,500, reflecting an average price of Rs 7 lakhs per acre. Similarly, Ext. P-3 is also dated 24-6-1994 pertaining to the sale of 10 kanals 10

marlas of land reflecting average sale price of Rs 7,00,000. Ext. P-4 is dated 25-10-1991 whereby land measuring 9 kanals 9 marlas in Manesar was sold for Rs 9,15,470 reflecting an average price of Rs 7,75,000 per acre. Ext. P-7 and Ext. P-8 are also the sale instances dated 24-6-1994 with regard to land measuring 9 marlas each reflecting an average price of Rs 7,00,000 per acre. The remaining sale instances, Exts. P-9 and P-13 are of the year 1996 i.e. more than two years after the date of notification under Section 4 of the Act. Similarly, the sale instances, Exts. P-10, P-11 and P-12 pertain to the sale of land in Village Noorangpur. The said sale instances are, thus, not relevant.

On the other hand, the sale instances relied upon by the State are Ext. R-l to Ext. R-15 but they have rightly been rejected by the Reference Court itself on the ground that the said sale instance reflected an average price which is even less than the one assessed by the Collector and, as such, in view of the provisions of Section 25 of the Act, the same were not relevant and worth consideration.

As noticed above, the land which was acquired in the present proceedings is approximately 1500 acres. The sale instance, Ext. P-1 in my considered view, reflects as near as possible, the market value of the acquired land on the date of notification under Section 4 of the Act. The said sale had taken place on 16-9-1994. The recitals in the sale deed reflect that there was a prior agreement between the two companies on 31-5-1994 with regard to the sale of the land. It is also recited in the sale deed that the entire sale consideration was paid by the purchaser company to the seller company by bank drafts. The aforesaid fact is also proved by Albel Singh, PW 1. In this view of the matter, since the aforesaid transaction was between two companies, then obviously, there is no justification to doubt the authenticity of the said sale transaction. Moreover, the land covered under the aforesaid sale transaction is a big chunk of land i.e. more than 12 acres. The said land was situated in Village Naharpur Kasan i.e. one of the villages from which the present land was also acquired. In these circumstances to my mind, the said sale instance could not have been rejected by the Reference Court, in any manner. Although the other sale instances, Exts. P-2, P-3, P-7 and P-8 reflect the market price of Rs 7 lakhs per acre but it is also apparent that the aforesaid transactions pertain to small piece of land and are between private persons. In these circumstances, the possibility of the aforesaid sale deeds being undervalued, with a view to save stamp duty and registration charges, can also not be ruled out. However, there is no justification to prefer the aforesaid sale deeds, Exts. P-2, P-3, P-7 and P-8 over and above the sale deed, Ext. P-1 which is a transaction between the two corporate bodies and wherein the entire sale consideration had been paid through bank drafts. The aforesaid sale also pertains to a big chunk of land i.e. more than 12 acres. It may also be noticed that the acquired land was owned by approximately more than 350 persons, thus each having a small holding. Therefore, the sale deed,

Ext. P-1 duly reflects the market value, which a willing buyer would have paid to a willing seller." (emphasis supplied)

7. The appeals filed by the landowners affected by the first acquisition were disposed of by the learned Single Judge vide judgment dated 5-9-2008[3]. He referred to the judgment dated 19-5-2006[2] but applied the cut of 20% and fixed market value of the acquired land at the rate of Rs 12 lakhs per acre.

8. The petitioner had challenged the judgments of the High Court on several grounds but the only point argued by the learned Senior Counsel appearing on its behalf was that the High Court committed serious error by determining market value of the acquired land solely on the basis of Ext. P-1 ignoring other sale deeds by which similar parcels of land were sold at the rate of Rs 7 lakhs per acre or less. This is evinced from the following extracts of the judgment[1] under review: (SCC p. 178, paras 13-14)

"*13.* Shri Amarendera Sharan, learned Senior Counsel and Shri Ravindra Bana, learned counsel appearing for the Corporation argued that the High Court committed serious error by fixing market value of the acquired land at Rs 15 lakhs per acre in one batch of appeals and Rs 12 lakhs in the other batch of appeals by relying upon the sale deed, Ext. P-1 excluding other sale transactions, which were produced before the Reference Court. The learned counsel submitted that the value of 12 acres of land which was sold by Ext. P-1 was wholly disproportionate to the prevailing market value and, therefore, the same could not be made the basis for fixing the market value of the acquired land measuring more than 1490 acres.

14. Shri Amarendera Sharan emphasised that the actual market value of the acquired land was not more than Rs 7 lakhs and the High Court committed serious error by discarding other sale transactions through which similar parcels of land were sold for Rs 7 lakhs or less. The learned Senior Counsel submitted that if the High Court had given due weightage to other sale transactions, market value of the acquired land could not have been fixed at Rs 15 lakhs or even Rs 12 lakhs per acre."

9. This Court rejected the aforesaid argument and observed: (*Pran Sukh case*[1], SCC p. 180, para 22)

"*22.* In our view, the learned Single Judge did not commit any error by relying upon sale transaction, Ext. P-1 for the purpose of fixing market value of the acquired land. Undisputedly, that sale transaction was between two corporate entities and the entire sale price was paid through bank drafts. It is also not in dispute that the land which was subject-matter of Ext. P-1 is situated at Village Naharpur Kasan and is adjacent to the acquired land. The Corporation and the State Government did not

3 *Opera House Creations (P) Ltd.* v. *State of Haryana*, RFA No. 2587 of 2004, decided on 5-9-2008 (P&H)

2 *Pran Sukh* v. *State of Haryana*, RFA No. 2699 of 2003, decided on 19-5-2006 (P&H)

1 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394

adduce any evidence to prove that the land sold vide Ext. P-1 was overvalued with an oblique motive of helping the landowners to claim higher compensation. Therefore, we do not find any justification to discard or ignore the sale deed, Ext. P-1. The refusal of the learned Single Judge to rely upon other sale transactions in which sale price of the land was shown as Rs 7 lakhs per acre also does not suffer from any legal infirmity because it is well known that transactions involving transfer of properties are usually undervalued with a view to avoid payment of the requisite stamp duty and registration charges."

10. With a view to generate funds necessary for payment of additional compensation to the landowners, the petitioner increased the cost of land to be allotted to the prospective industrial entrepreneurs and others. IMT Industrial Association, which claims to be a representative body of the plot-holders protested against this decision of the petitioner and persuaded it to seek review of the judgment dated 17-8-2010[1].

11. In the review petitions filed on behalf of the petitioner, which were registered as Review Petitions Nos. 2107-108 of 2010, it was pleaded that the determination of market value needs reconsideration because the sale deed, Ext. P-1 on which reliance was placed by the High Court and this Court was not a genuine transaction. According to the petitioner, M/s Heritage Furniture (P) Ltd. and M/s Duracell India (P) Ltd. were controlled by the same management and this fact was brought to the notice of the officers concerned only after disposal of the appeals by this Court. IMT Industrial Association filed IAs Nos. 5 and 6 for impleadment as party to the review petitions.

12. This Court dismissed the review petitions and the impleadment applications vide order dated 13-1-2011[4], paras 4 to 8 of which are extracted below:

"*4.* In the review petitions, it has been averred that the sale transaction dated 16-9-1994, upon which reliance was placed by the learned Single Judge of the Punjab and Haryana High Court and by this Court for grant of enhanced compensation was motivated because parties to the transaction were under the control and management of the common Board of Directors and this fact came to the notice of the review petitioner only after dismissal[1] of the appeals by this Court.

5. In Para A of the grounds of the review petitions, the review petitioner has referred to the composition of M/s Duracell India (P) Ltd. and Heritage Furniture (P) Ltd. to show that both the companies have common management.

6. The review petition is supported by an affidavit of Shri Hamvir Singh, Deputy General Manager (IA), Haryana State Industrial and Infrastructure Development Corporation Ltd. In Para 2 of his affidavit, the deponent has stated that the contents of the review petition (pp. 25 to

1 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394

4 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2012) 7 SCC 721

43), list of dates (pp. B to P) and other applications are true to my knowledge and the information derived from records of the case. However, he has not enclosed any document on the basis of which this assertion has been made.

7. We have carefully perused the entire record and are convinced that the judgment[1], of which review has been sought, does not suffer from any error apparent warranting its reconsideration. The review petitioner has not produced any material to substantiate its assertion that the price mentioned in the sale deed relied upon by the courts was manipulated with an oblique motive. Hence, the review petitions are dismissed.

8. The application filed by IMT Industrial Association is wholly misconceived. The members of the applicant are beneficiaries of the acquisition of the land because plots have been allotted to them out of the acquired land which belong to the respondents and others. Therefore, they do not have the locus standi to be heard in the proceedings relating to the determination of market value of the acquired land and that too in a petition filed by the Corporation for review of the judgment[1] of this Court. It is not the pleaded case of the applicant that its members were not aware of the fact that the plots have been carved out of the land acquired by the State Government for and on behalf of the Corporation and that the price mentioned in the allotment letter was tentative and further that in Para 5 of the allotment letter, it was specifically mentioned that they will have to pay additional price in the event of enhancement in the compensation. It is quite surprising that members of the applicant Association paid price of the plots at the rate of Rs 2200 per square yard and they are objecting to the payment of compensation to the landowners at the rate of less than Rs 500 per square yard. This shows that members of the applicant want to take advantage of the measure taken by the State Government for compulsory acquisition of the land of the farmers and want to deprive them of just and reasonable compensation. Consequently, the impleadment application is dismissed."

13. Soon thereafter, the petitioner filed these petitions by reiterating that sale deed, Ext. P-1 dated 16-9-1994 executed by M/s Heritage Furniture (P) Ltd. in favour of M/s Duracell India (P) Ltd. was not a bona fide transaction and the High Court and this Court committed serious error by relying upon the same for the purpose of determining the amount of compensation. In Para A of the review petition, the petitioner has set out the brief history of the two companies and pleaded that at the time of the execution of sale deed both the entities were under the control of the same set of persons. It has also been averred that the facts relating to composition of the Board of Directors of two companies could not be ascertained by exercising due diligence and the true nature of Ext. P-1 was revealed only after the judgment[1] of this Court.

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14. According to the petitioner, M/s Heritage Furniture (P) Ltd. had purchased different parcels of land from the farmers by executing ten different sale deeds executed on 16-8-1993 and 18-8-1993 at an average price of Rs 6 lakhs per acre and, as such, there was no occasion for M/s Duracell India (P) Ltd. to have purchased the same land just after one year at the rate of Rs 20,03,103 per acre. It is the petitioner's case that exorbitant price is shown to have been paid by the vendee to the vendor because its Indian promoters were to be benefited by the proposed joint venture between the Indian company and M/s Duracell Inc. USA.

15. Another ground taken by the petitioner is that sale deeds, Exts. P-2, P-3, P-4, P-7 and P-8, three of which were executed in June 1994 and one in October 1991 at an average price of Rs 7 lakhs per acre reflected true market value of the acquired land and in the absence of any cogent evidence, the High Court and this Court could not have discarded the same by assuming that the same were undervalued.

16. On 30-3-2011, this Court issued notice[5] to the landowners and granted stay subject to certain conditions which included a direction to the Managing Director of the petitioner to file an affidavit and disclose the names of the officers/officials responsible for not bringing the facts relating to Ext. P-1 to the notice of the High Court and this Court. In compliance with that order, Shri Rajiv Arora, the Managing Director of the petitioner filed affidavit dated 27-7-2011 in which he did not disclose the names of the officers/officials concerned but claimed that the functionaries of the Corporation did not suspect the bona fides of the sale deed executed between M/s Heritage Furniture (P) Ltd. and M/s Duracell India (P) Ltd. because the same was a registered instrument and they did not know that the two companies were controlled by the same set of persons. Shri Arora further claimed that the facts relating to two companies were brought to the notice of the officers concerned by the representatives of the Manesar Industrial Welfare Association, who were given opportunity of personal hearing in compliance with the order passed by the Punjab and Haryana High Court in *Manesar Industries Welfare Assn.* v. *State of Haryana*[6]. According to Shri Arora, the information made available by the Association was got verified from the records of the Registrar of Companies and the same was found to be correct.

17. In support of the affidavit of its Managing Director, the petitioner has placed on record the following documents:

(*i*) Search reports issued by M/s AKG and Co. relating to M/s Heritage Furniture (P) Ltd. and M/s Duracell India (P) Ltd. dated 20-1-2011 and 21-2-2011;

(*ii*) Certificate of incorporation of Heritage;

(*iii*) MoA and AoA of Heritage;

5 *Haryana State Industrial Development Corpn.* v. *Mawasi*, (2012) 7 SCC 737

6 WP No. 6527 of 2010, order dated 8-4-2010 (P&H)

(*iv*) Mutations showing the purchase of land by Heritage under sale deeds dated 16-8-1993 and 18-8-1993 at an average price of Rs 6 lakhs per acre;

(*v*) Annual return of Duracell dated 14-6-2000 showing Saroj Kumar Poddar, Gurbunder Singh Gill and Jyotsana Poddar as the Directors;

(*vi*) True copy of sale deed dated 16-9-1994;

(*vii*) Statement of Albel Singh substantiating the statements of the petitioners.

18. Some of the landowners have filed reply-affidavits. Their stand is that Ext. P-1 reflected true market value of the acquired land as on the date of issuance of the notifications under Section 4(1) and that the petitioner's assertion that the transaction was not genuine is not correct. They have denied that the vendor and vendees were under the control of the same management and that exorbitantly high price was paid for 12 acres of land in anticipation of some collaboration between M/s Duracell India (P) Ltd. and M/s Duracell Inc. USA, which would have benefited the former.

19. With a view to avoid repetition, we may notice the averments contained in Paras 4 to 9 of the reply-affidavit filed in Review Petition No. 239 of 2011 and Para 5 of the reply-affidavit filed on behalf of the landowners who were respondents in Civil Appeal No. 6561 of 2009. The same read as under:

Paras 4 to 9 of the reply-affidavit filed in Review Petition No. 239 of 2011

"4. I state that vide five sale deeds all dated 6-7-1992 land measuring 49 kanals 2 marlas situated in Village Kherka Daula, District Gurgaon was sold by some of the co-owners to one Shri D.C. Rastogi, s/o Shri L.P. Rastogi at the sale price of Rs 1,35,000 per acre. The said village is at a distance of about 2 km from the land in question. Copies of five sale deeds all dated 6-7-1992 are collectively Annexure R-1 hereto. Thereafter the vendee Shri D.C. Rastogi sold the said land in terms of agreement to sell dated 6-12-1993 vide sale deed dated 16-3-1994 at the rate of about Rs 15,73,289 per acre. This shows that there was a jump in the price of the land in that area equal to almost 11 times of the original price. It is also common knowledge that the parties often undervalue the land price in order to minimise stamp duty and the land might have been sold at a higher price. Copy of sale deed dated 16-3-1994 is Annexure R-2 hereto. Thus if M/s Heritage Furniture (P) Ltd. purchased land, which is the subject-matter of sale deed dated 16-9-1994, Ext. P-1, in the year 1993 at a price of about Rs 6 lakhs per acre as alleged by the review petitioner even though there is no evidence of purchase at such rate then its value increasing to Rs 20 lakhs per acre in the year 1994 is commensurate with the market trend. Moreover agreement to sell dated 31-5-1994 was executed after first notification was issued under Section 4 on 30-4-1994 and it is a common knowledge that after publication of Section 4 notification, the value of the land increases.

5. It is further submitted that vide sale deed dated 14-12-1993 (Ext. P-10) one M/s DCN International Ltd. sold land measuring 62 kanals 7 marlas situated in Village Naurangpur, District Gurgaon for Rs 95,21,160 i.e. at the rate of Rs 13,74,345 per acre. Copy of sale deed dated 14-12-1993 is Annexure R-3 hereto.

6. I further state that sale deed dated 16-9-1994 (Ext. P-1) was executed pursuant to the agreement to sell dated 31-5-1994 between M/s Heritage Furniture (P) Ltd. (vendor) and M/s Duracell (India) (P) Ltd. (vendee) wherein the vendor agreed to sell the land in question measuring about 12 acres to the vendee at a sale price of Rs 2,42,00,000 (Rupees two crore forty-two lakhs only) as is clear from the recital in the sale deed itself. Ultimately vide sale deed dated 16-9-1994 the said land was sold at the same sale price by the vendor to the vendee. Thus the sale price of the land was agreed upon and fixed on 31-5-1994 as is clear from the recitation of the sale deed itself.

7. I further state that as per assertion of the review petitioner M/s Heritage Furniture (P) Ltd. (vendor) and M/s Duracell (India) (P) Ltd. (vendee) had common persons in their Board of Directors, namely, Shri Saroj Kumar Poddar, Ms Jyotsana Poddar and Shri Gurbunder Singh Gill. The review petitioner has filed search reports of both the said companies to show that the abovesaid three persons were common Directors of both the companies. However, from the said search report of M/s Duracell (India) (P) Ltd. it is clear that the two Directors, namely, Shri Saroj Kumar Poddar and Ms Jyotsana Poddar were appointed as Directors of this company on 9-6-1994 whereas Shri Gurbunder Singh Gill was appointed as its Director on 9-2-1997. Thus all the three alleged common Directors of the vendor and vendee companies were not on the Board of Directors of M/s Duracell (India) (P) Ltd. on or before 31-5-1994 on which date the agreement to sell the land in question was executed and the sale price was fixed. The said three Directors had no interest in M/s Duracell (India) (P) Ltd. (vendee) as on 31-5-1994 when the sale price of the land was fixed.

8. I further state that except for making a bald allegation that the sale price of the said land was inflated intentionally so that the vendee company would increase its share holding in a joint venture it was going to enter into with one Duracell Inc. USA, this assertion has not been substantiated by placing any cogent evidence on record. So much so that even it has not been pleaded in the review petition as to whether joint venture between M/s Duracell (India) (P) Ltd. and M/s Duracell Inc. USA did take place or not. To the knowledge of the deponent there was no joint venture between M/s Duracell (India) (P) Ltd. and M/s Duracell Inc. USA. This fact that there was no joint venture between the said two companies also stands proved from the fact that the land purchased vide the said sale deed dated 16-9-1994 was sold by M/s Duracell (India) (P) Ltd. vide sale deed dated 28-4-2004 to one M/s Lattu Finance & Investments Ltd. at a sale consideration of Rs 13,62,00,000 i.e. approximately at the rate of Rs 1,13,00,000 (Rupees one crore thirteen

lakhs per acre approximately). At the time the name of M/s Duracell (India) (P) Ltd. had been changed to M/s Gillette India Ltd. on account of its amalgamation with other company. In this sale deed dated 28-4-2004 entire history of purchase of land by M/s Duracell (India) (P) Ltd. from M/s Heritage Furniture (P) Ltd. in 1994 onwards has been recited, which includes construction of industrial building over the said land, its conversion of status from private limited to public limited company, its amalgamation with Indian Shaving Products Ltd. in the year 2000 and its change of name from Indian Shaving Products Ltd. to Gillette India Ltd. in December 2000 and thereafter its sale to M/s Lattu Finance & Investments Ltd. However, in the entire recitation there is no mention of any joint venture with M/s Duracell Inc. USA.

9. It is submitted by the respondents/landowners that the said sale deed (Ext. P-1) reflects true market price of the land in the year 1994 when Section 4 notification for the acquired land was issued. The allegation of the review petitioner that the sale deed (Ext. P-1) reflects inflated price is false and baseless. It is further submitted that another sale deed dated 17-7-1996 which is on record as (Ext. P-9) reflects the market value of the land in one of the acquired villages at Rs 25,00,000 (Rupees twenty-five lakhs) per acre. In this transaction 1 kanal 11 marlas of land situated in Village Naharpur Kasan, has been sold at a price of Rs 4,84,375. This sale deed also proves that the market price of the acquired land in the year 1994 was Rs 20 lakhs per acre. Copy of sale deed dated 17-7-1996 is Annexure R-4 hereto. It may be mentioned here that the same purchaser purchased different pieces of land at the same rate vide 15 different sale deeds and the total land purchased was 18 kanals 5 marlas i.e. more than 2.25 acres."

* * *

Para 5 of the reply-affidavit filed on behalf of the landowners who were respondents in Civil Appeal No. 6561 of 2009

"5. That the present review petition is being filed only on the ground that Ext. P-1, which has been relied upon by the Hon'ble High Court[2] as well as upheld[1] by this Hon'ble Court was entered into by the corporates which were under the control and management of common Board of Directors and hence it is not the correct market value. In reply thereto the respondents humbly submits that:

(*a*) This fact for the first time is brought into notice at the level of this Hon'ble Court, therefore, the review petitioners are estopped by their own conduct.

(*b*) That merely both the corporates have a common Board of Directors does not prove that the sale in between the corporates was at escalated rates, rather it should be on other side i.e. a common

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Board would have tried to get the sale as possible as on lower rate. Therefore the ground for review is not legally justifiable.

(*c*) It is submitted that later on corporate Gillette India Ltd. made a sale deed (land in issue of Ext. P-1) dated 28-4-2004 to another corporate, namely, Lattu Finance & Investments Ltd. for a sum of Rs 13,62,00,000 of land measuring 96 kanals and 13 marlas. (i.e. Rupees one crore sixty-two lakhs per acre). It is submitted that this sale cannot be said to be at an escalated rate and therefore Ext. P-1 denotes the correct market value at the relevant time. The copies of the relevant sale deeds are annexed herewith and marked as Annexure R-1.

(*d*) It is also submitted that some other sale deeds at the relevant time (20-9-1996) were executed in favour of Time Master (P) Ltd. which came around Rs 25 lakhs per acre. Details of the same are as follows:

Sl. No.	*Vasika No.*	*Date*	*Land sold*	*Sale consideration*	
1.	8725	20-9-1996	1K 1½M	Rs	3,55,000
2.	8726	20-9-1996	1K 8M	Rs	3,59,375
3.	8727	20-9-1996	1K 1½M	Rs	3,53,000
4.	8728	20-9-1996	1K 5M	Rs	4,06,000
5.	8799	20-9-1996	1K 9M	Rs	3,75,000
6.	8807	20-9-1996	1K 5M	Rs	4,06,000
7.	8815	20-9-1996	1K 6M	Rs	4,08,000
8.	8825	20-9-1996	1K 1M	Rs	3,53,000
9.	8832	20-9-1996	0K 17M	Rs	2,75,000
10.	8839	20-9-1996	1K 6M	Rs	4,08,000
11.	8846	20-9-1996	1K 5M	Rs	4,06,000
12.	8854	20-9-1996	1K 1M	Rs	3,55,000
13.	8861	20-9-1996	0K 17M	Rs	2,75,000
	Total land sold is 15 kanals 3 marlas, total amount is Rs 47,34,375 i.e. at the rate of Rs 25 lakhs per acre.				
14.	5431	17-7-1996	1K 11M	Rs	4,84,375
	i.e. at the rate of Rs 25 lakhs per acre.				
	It is submitted that Sale Deed No. 5431 (at Sl. No. 14) was already produced as Ext. P-9 before the Reference Court in favour of Time Master (P) Ltd. by Vinod Kumar (vendor).				
	Thus Time Master India (P) Ltd. purchased total land measuring 16 kanals 14 marlas at the rate of Rs 25 lakhs per acre.				

(*e*) It is also relevant to point out the following are the sale transactions in December 2006 of Village Naharpur Kasan:

a

Land sold of Village Naharpur Kasan						
Sl. No.	*Vasika No.*	*Date*	*Land sold*		*Sale consideration*	*Per acre*
1.	18628	4-12-2006	12K 16.5M	Rs	2,56,50,000	1,60,00,000
2.	18742	5-12-2006	5K 13M	Rs	1,13,00,000	1,60,00,000
3.	18743	5-12-2006	5K 14M	Rs	74,00,000	1,60,00,000
4.	19350	14-12-2006	5K 13M	Rs	1,13,00,000	1,60,00,000

b

(*f*) It is also submitted that the rate at which auction-sale of Tower site on acquired land is done on 30-6-2006 is as follows:

c

Tower Site No.	*Area in metres*		*Amount of consideration*	*Per square yard*
J	6804	Rs	95.10 crores	1,16,865
K	5832	Rs	101.50 crores	1,45,518
L	6804	Rs	93.00 crores	1,14,284.50

d

(*g*) It also submitted the following details of auction by HSIDC IMT, Manesar:

Auction-sales by HSIDC IMT, Manesar

Allotment of SCO sites for shopping booth in Sector 1, IMT, Manesar, auction held on 18-8-2009.

e

Sl. No.	*Site No.*	*Area in sq m*	*Price of site*	
1.	T-1	144	Rs	2,67,50,000
2.	T-2	144	Rs	2,33,50,000
3.	T-3	144	Rs	2,29,00,000
4.	T-4	144	Rs	2,29,00,000
5.	T-5	144	Rs	2,31,00,000
6.	T-7	144	Rs	2,28,00,000

f

7.	T-8	144	Rs	2,25,00,000
8.	T-9	144	Rs	2,22,00,000
9.	T-10	144	Rs	2,16,00,000
10.	D-1	108	Rs	1,82,00,000
11.	D-2	108	Rs	1,58,00,000
12.	D-3	108	Rs	1,62,50,000

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13.	D-4	108	Rs	1,60,00,000
14.	D-5	108	Rs	1,51,00,000
15.	D-6	108	Rs	1,38,50,000
16.	D-7	108	Rs	1,40,00,000
17.	D-8	108	Rs	1,37,00,000
18.	D-9	108	Rs	1,35,00,000

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19.	D-10	108	Rs	1,33,50,000

Total area 2376 sq m, total amount Rs 35,78,50,000 i.e. Rs 1,50,610.26 per metre i.e. Rs 1,25,928.58 per yard i.e. Rs 60,94,94,327 per acre.

Allotment of SCO sites for shopping booth in Sector 1, IMT, Manesar, auction held on 11-8-2010:

Sl. No.	*Site No.*	*Area in sq m*	*Price of site*
1.	D-10	108	Rs 2,12,50,000
2.	D-12	108	Rs 1,89,50,000
3.	D-14	108	Rs 1,90,00,000
4.	D-15	108	Rs 1,88,50,000
5.	D-16	108	Rs 1,92,00,000

Allotment of triple-storeyed SCO sites in Sector 1, IMT, Manesar, auction held on 11-8-2010 at the following rates:

Sl. No.	*Site No.*	*Area in sq m*	*Price of site*
1.	11	144	Rs 3,03,00,000
2.	12	144	Rs 3,00,00,000
3.	12-A	144	Rs 2,87,00,000

Total area 972 sq m allotted for total amount of Rs 18,62,50,000 i.e. Rs 1,91,615.22 per metre i.e. Rs 1,60,213.67 per square yard or Rs 77,54,34,189 per acre."

20. S/Shri Gopal Subramanium and Altaf Ahmed, learned Senior Advocates and other counsel who appeared for the petitioner relied upon the reports dated 20-1-2011 and 21-1-2011 prepared by the Chartered Accountant, M/s AKG and Company to show that at least two of the Directors, namely, Shri Saroj Kumar Poddar and Ms Jyotsana Poddar were common to the management of the two companies and submitted that land was shown to have been purchased by M/s Duracell India (P) Ltd. at a very high price because it was hoping to reap the benefit of the joint venture agreement with M/s Duracell Inc. USA. The learned counsel pointed out that the vendor, namely, M/s Heritage Furniture (P) Ltd. had purchased 12 acres land from different landowners at an average price of Rs 6 lakhs per acre and argued that even if the benefit of 12% notional increase in the value of land was allowed to the vendor, no person of ordinary prudence would have purchased the same land after a period of 13 months at the rate of more than Rs 20 lakhs per acre. The learned counsel also referred to the statement of the authorised signatory of the vendor M/s Heritage Furniture (P) Ltd. to drive home the point that the sale deed, Ext. P-1 was not a bona fide transaction.

21. The learned Senior Counsel then argued that dismissal[4] of Review Petitions Nos. 2107-108 of 2010 cannot operate as a bar to the maintainability of these petitions because till 13-1-2011, the officers of the petitioner did not have any inkling about the composition of the two companies and the fact that the vendor had purchased the land in 1993 at the rate of Rs 6 lakhs per acre only and the relevant facts came to their notice only in October 2010 from the representatives of IMT Industrial Association.

22. S/Shri J.L. Gupta, S.R. Singh, P.S. Patwalia and Paras Kuhad, Senior Advocates and other counsel, who appeared for the landowners argued for dismissal of the review petitions. They emphasised that the very premise on which the review petitions have been filed, namely, discovery of the facts relating to composition of the Board of Directors of the two companies is incorrect because no one from the Poddar Group was on the Board of Directors of M/s Duracell India (P) Ltd. till 9-6-1994. Shri J.L. Gupta and Shri Paras Kuhad pointed out that Shri Saroj Kumar Poddar and Ms Jyotsana Poddar were taken on the Board of Directors of M/s Duracell India (P) Ltd. after execution of the agreement for sale and no joint venture agreement was executed between the vendee i.e. M/s Duracell India (P) Ltd. and M/s Duracell Inc. USA. Shri Paras Kuhad also referred to the memorandum of association and articles of association of M/s Duracell India (P) Ltd. to show that S/Shri Jyoti Sagar and Sajay Singh were the only promoters of the company.

23. The learned counsel then argued that the petitioner cannot seek review of judgment dated 17-8-2010[1] on the pretext of discovery of facts relating to composition of the two companies because no evidence was adduced before the Reference Court to prove that the sale deed, Ext. P-1 was not a bona fide transaction or that vendee had paid exorbitant price for extraneous reasons. The learned counsel further argued that after dismissal[4] of Review Petitions Nos. 2107-108 of 2010, the petitioner cannot revive its prayer because there was total absence of diligence on the part of its officers.

24. We shall first consider whether the petitioner's prayer for review should be entertained by ignoring the dismissal of similar petitions by this Court vide order dated 13-1-2011[4]. A careful reading of that order shows that in Review Petitions Nos. 2107-108 of 2010, the petitioner had sought reconsideration of the judgment dated 17-8-2010[1] on the premise that the vendor and the vendee had common management and that the price mentioned in the sale deed had been manipulated with an oblique motive. The Court declined to entertain this plea by observing that the petitioner had not produced any material to substantiate its assertion.

25. Along with the present batch of the review petitions, the petitioner has placed on record the search reports prepared by M/s AKG and Company,

4 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2012) 7 SCC 721

1 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394

certificate of incorporation, memorandum of association and articles of association of M/s Heritage Furniture (P) Ltd., mutations showing the purchase of land by M/s Heritage Furniture (P) Ltd. vide sale deeds dated 16-8-1993 and 18-8-1993, annual return of M/s Duracell India (P) Ltd. showing Shri Saroj Kumar Poddar, Shri Gurbunder Singh Gill and Ms Jyotsana Poddar as the Directors and the statement of Albel Singh, but these documents neither singularly nor collectively support the petitioner's plea that management of the two companies i.e. the vendor and the vendee, was under the control of the same set of persons or that the vendee had paid unusually high price with some oblique motive. As a matter of fact, Shri Saroj Kumar Poddar and Ms Jyotsana Poddar were appointed as Directors of M/s Duracell India (P) Ltd. on 9-6-1994 and Shri Gurbunder Singh Gill was so appointed on 9-2-1997 whereas the agreement for sale was executed on 31-5-1994. The petitioner has not controverted the averments contained in Paras 4 and 5 of the reply-affidavit filed in Review Petition No. 239 of 2011, perusal of which makes it clear that in 1993 similar parcels of land had been sold at the rate of Rs 15,73,289 and Rs 13,74,345 per acre. Therefore, it cannot be said that M/s Duracell India (P) Ltd. had paid exorbitantly high price to M/s Heritage Furniture (P) Ltd. for extraneous reasons and we do not find any valid ground for indirect review of order dated 13-1-2011[4].

26. At this stage it will be apposite to observe that the power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The rules framed by this Court under that article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908 which reads as under:

Order 47 Rule 1:

"**1.** ***Application for review of judgment***.—(1) Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(*b*) by a decree or order from which no appeal is allowed, or

(*c*) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

4 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2012) 7 SCC 721

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case of which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment."

27. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In *S. Nagaraj* v. *State of Karnataka*[7], this Court referred to the judgments in *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai*[8] and *Rajunder Narain Rae* v. *Bijai Govind Sing*[9] and observed: (*S. Nagaraj case*[7], SCC pp. 619-20, para 19)

"*19*. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai*[8] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae* v. *Bijai Govind Sing*[9] that an order made by the Court was final and could not be altered: (*Rajunder Narain Rae case*[9], MIA p. 216)

> '... nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in. ... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects, in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

7 1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448
8 AIR 1941 FC 1
9 (1837-41) 2 MIA 181 : (1836) 1 Moo PC 117

Basis for exercise of the power was stated in the same decision as under:

> 'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (*c*) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40 Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

28. In *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius*[10], the three-Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 CPC and observed: (AIR p. 538, para 32)

> "*32.* … It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.
>
> It may allow a review on three specified grounds, namely, (*i*) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (*ii*) mistake or error apparent on the face of the record, and (*iii*) for any other sufficient reason.

10 AIR 1954 SC 526

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule'. (See *Chhajju Ram* v. *Neki*[11].) This conclusion was reiterated by the Judicial Committee in *Bisheshwar Pratap Sahi* v. *Parath Nath*[12] and was adopted by our Federal Court in *Hari Sankar Pal* v. *Anath Nath Mitter*[13], FC at pp. 110-11. The learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of 'mistake or error apparent on the face of the record' or some ground analogous thereto."

29. In *Thungabhadra Industries Ltd.* v. *Govt. of A.P.*[14], another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed: (AIR p. 1377, para 11)

"*11.* … A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

30. In *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma*[15], this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe: (SCC p. 390, para 3)

"*3.* … But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

11 (1921-22) 49 IA 144 : AIR 1922 PC 112
12 (1933-34) 61 IA 378 : AIR 1934 PC 213
13 AIR 1949 FC 106
14 AIR 1964 SC 1372 : (1964) 5 SCR 174
15 (1979) 4 SCC 389

31. In *Meera Bhanja* v. *Nirmala Kumari Choudhury*[16], the Court considered as to what can be characterised as an error apparent on the face of the record and observed: (SCC p. 173, para 9)

"*9.* … it has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in *Satyanarayan Laxminarayan Hegde* v. *Mallikarjun Bhavanappa Tirumale*[17] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: (AIR pp. 141-42, para 17)

> *17.* … An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

32. In *Parsion Devi* v. *Sumitri Devi*[18], the Court observed: (SCC p. 719, para 9)

"*9.* … An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC … A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

33. In *Lily Thomas* v. *Union of India*[19], R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words: (SCC p. 251, para 56)

"*56.* ... Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised."

16 (1995) 1 SCC 170
17 AIR 1960 SC 137
18 (1997) 8 SCC 715
19 (2000) 6 SCC 224 : 2000 SCC (Cri) 1056

34. In *Haridas Das* v. *Usha Rani Banik*[20], the Court observed: (SCC p. 82, para 13)

> "*13.* … The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict."

35. In *State of W.B.* v. *Kamal Sengupta*[21], the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed: (SCC p. 633, paras 21-22)

> "*21.* At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.
>
> *22.* The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(*f*) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

36. In the light of the propositions laid down in the aforementioned judgments, we shall now examine whether the petitioner has succeeded in

20 (2006) 4 SCC 78
21 (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735

making out a case for exercise of power by this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC. This consideration needs to be prefaced with an observation that the petitioner has not offered any explanation as to why it did not lead any evidence before the Reference Court to show that the sale deed, Ext. P-1 was not a bona fide transaction and the vendee had paid unusually high price for extraneous reasons. The parties had produced several sale deeds, majority of which revealed that the price of similar parcels of land varied from Rs 6 to 7 lakhs per acre. A reading of the sale deeds would have prompted any person of ordinary prudence to make an enquiry as to why M/s Duracell India (P) Ltd. (vendee) had paid more than Rs 2,42,00,000 for 12 acres of land, which have been purchased by the vendor only a year back at an average price of Rs 6 lakhs per acre. However, the fact of the matter is that neither the advocate for the petitioner nor its officers/officials, who were dealing with the cases made any attempt to lead such evidence. This may be because they were aware of the fact that at least in two other cases such parcels of land had been sold in 1993 for more than Rs 13 lakhs and Rs 15 lakhs per acre and in 1996, a sale deed was executed in respect of the land of Village Naharpur Kasan at the rate of Rs 25 lakhs per acre. This omission coupled with the fact that the petitioner's assertion about commonality of the management of two companies is ex facie incorrect leads to an irresistible inference that the judgment dated 17-8-2010[1] does not suffer from any error apparent on the face of the record warranting its review. Surely, in the guise of seeking review, the petitioner cannot ask for de novo hearing of the appeals.

37. The petitioner's plea that the documents produced along with the review petitions could not be brought to the notice of the Reference Court and the High Court despite exercise of due diligence by its officers does not commend acceptance because it had not been explained as to why the officers/officials concerned, who were very much aware of other sale transactions produced by themselves and the landowners did not try to find out the reasons for wide difference in the price of land sold by Ext. P-1 and other parcels of land sold by Exts. P-2 to P-13 and Exts. R-1 to R-15.

38. Before concluding, we would like to add that while deciding the review petitions, this Court cannot make roving inquiries into the validity of the transaction involving the sale of land by M/s Heritage Furniture (P) Ltd. to M/s Duracell India (P) Ltd. or declare the same to be invalid by assuming that the vendee had paid higher price to take benefit of an anticipated joint venture agreement with a foreign company. Of course, the petitioner has not controverted the statement made by the respondents that the vendee had sold the land to M/s Lattu Finance & Investments Ltd. in 2004 for a sum of Rs 13,62,00,000 i.e. at the rate of Rs 1,13,00,000 per acre.

1 *Haryana State Industrial Development Corpn.* v. *Pran Sukh*, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394

ANNEXURE 3

2021 SCC OnLine NGT 1052

In the National Green Tribunal[†]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND SHEO KUMAR SINGH, MEMBER (JUDICIAL) AND NAGIN NANDA, MEMBER (EXPERT))

Goa Foundation ... Applicant;

Versus

State of Goa and Others ... Respondent(s).

Trinitas Estate India LLP ... Applicant in M.A.s.;

M.A. No. 15/2021 & M.A. No. 16/2021 in Original Application No. 479/2018
(Earlier O.A. No. 18/2013 (THC) (WZ)

Decided on March 25, 2021, [Date of hearing : 25.03.2021]

Advocate who appeared in this case :

Applicant : Mr. R.D. Soni, Advocate for Applicant in MA No. 15/2021 & 16/2021

ORDER

1. These miscellaneous applications have been filed by Trinitas Estate India LLP, Pune - 16 in a decided matter for modification of order of this Tribunal dated 18.08.2020. The matter was originally filed before the Bombay High Court and was transferred to the Tribunal. Prayer in the main case was to ensure demarcation of forest area in the State of Goa in pursuance of orders of the Hon'ble Supreme Court in *T.N. Godavarman Thirumulkpad* v. *Union of India*, (1997) 2 SCC 267.

2. The State of Goa constituted Expert Committees for the purpose which identified 46.11 sq. Kms area as private forest to be regulated as a 'deemed forest' in terms of the directions of the Hon'ble Supreme Court. The identification was done by the Committee after following due process. The Tribunal disposed of the matter accordingly. The report of the Expert Committee was not under challenge. The Tribunal has not, thus, undertaken the exercise of adjudicating upon any individual parcel of area being forest or not. Thus, exercise of inclusion or exclusion cannot be undertaken by this Tribunal. If there is any deficiency in the report of the expert Committee, challenge thereto can be in any appropriate proceedings and not by way of modification of order of the Tribunal.

3. In view of above, learned Counsel for the applicant seeks permission to withdraw the applications to take any other remedy at any other appropriate forum, in accordance with law.

The applications are accordingly disposed of. We do not express any opinion about availability of any other remedy.

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[†] Principal Bench, New Delhi

ANNEXURE 4 COLLY

2021 SCC OnLine Bom 1261

In the High Court of Bombay at Goa

(BEFORE M.S. SONAK AND M.S. JAWALKAR, JJ.)

Pedro Januario Carlosbarreto and Another ... Petitioner;

Versus

State of Goa, Thr Thecheif Secretary and Others ... Respondents.

Writ Petition No. 1513 of 2021 (Filing)

Decided on July 26, 2021

Advocates who appeared in this case:

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes, Advocate for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. Ankita Kamat, Additional Government Advocate for respondent No. 1, 2, 3, 5, 6, and 7.

Ms. Norma Alvares, Advocate for respondent No. 4.

Mr. R. Chodankar, Central Government Standing Counsel for respondent No. 8

The Order of the Court was delivered by

M.S. SONAK, J.:— Heard Mr. Pereira, learned Senior Advocate who appears along with Mr. B. Fernandes, Advocate for the petitioner, Mr. D. Pangam, learned Advocate General appears for respondent nos. 1, 2, 3, 5, 6, and 7. Ms. Alvares, learned Advocate Appears for respondent No. 4 and Mr. R. Chodankar, learned Standing Counsel for the Central Government appears for respondent No. 8.

2. The petitioner, by instituting this petition seeks the following substantive reliefs:

> *"a. For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned Report dated 20/06/2019 prepared by the Review Committee headed by Ms. Deep Shikha Sharma as illegal and arbitrary vis-a-vis the petitioners;*
>
> *b. For a Writ of Certiorari or any other writ, direction and/or order that consequent to prayer clause (a) being granted, the impugned Order dated 18/08/2020 passed by the Hon'ble National Green Tribunal (Western ZoOne) in O.A. No. 18/2013 (THC) (WZ) (renumbered as Original Application No. 479/2018) vis-a-vis the petitioners;"*

3. Mr. Pereira, learned Senior Advocate for the petitioner submits

that the petitioners were not a party before the National Green Tribunal (NGT) in O.A. No. 18 of 2013, and therefore, the order dated 18/08/2020 made by the NGT ought not to affect the rights of the petitioners. He submits that the order dated 18/08/2020 is liable to be set aside qua the petitioners on the ground of violation of the principle of natural justice.

4. Mr. Pereira submits that in any case the report dated 20/06/2019 prepared by Ms. Deep Shikha Sharma (Sharma Committee Report) was again prepared by the said Committee without hearing the petitioners and without applying the correct parameters as are prescribed. Mr. Pereira submits that, again, this is a case of violation of principles of natural justice, and therefore, the report, to the extent it affects the petitioners' proprietary rights is liable to be set aside.

5. Mr. Pereira relied on *Radha Krishan Industries* v. *State of Himachal Pradesh* [2021 SCC OnLine SC 334] to submit that the bar of alternate remedy is not attracted to a case where there is a violation of fundamental rights of the petitioners or where there is a violation of the principles of natural justice. Mr. Pereira submits that declaring the petitioners' property as a private forest without hearing the petitioners, violates Articles 14, 21, and 300A of the Constitution. He also submits that such a declaration violates the principles of natural justice. He, therefore submits that the present petition may be entertained without relegating the petitioners to any alternate remedy.

6. Ms. Alvares for respondent No. 4 points out that the appeal instituted by the State of Goa against the order dated 18/08/2020 made by the NGT, which is now impugned in this petition, was dismissed by the Hon'ble Apex Court on 01/02/2021. She also fairly pointed out that one of the parties, who had earlier unsuccessfully approached the NGT had instituted Civil Appeal No. 121 of 2021 and therein, the Hon'ble Apex Court, had issued notice and also directed the parties to maintain the status quo (confined to the said appeal). She submits that the present petition may not be entertained as, this issue of identification of various areas as forest areas was pending for the last several years and the NGT, being seized of the matter, has made several orders in this regard. She submits that even on merits the Petitioners have no case and respondent No. 4 will file an affidavit in case, the petition is entertained by this Court to demonstrate that there is no case made out to grant any reliefs in this petition.

7. The learned Advocate General submitted that the Civil Appeal No. 1 of 2021 which was dismissed by the Hon'ble Supreme Court on 01/02/2021 was restricted to an area of approximately 1.4 Sq.KM and not the entire area involved in the Sharma Committee Report. The learned Advocate General clarifies that this means that the State of Goa was not aggrieved by the entire Sharma Committee Report but only a

portion of it to the extent it covered a particular area of approximately 1.4 sq. km.

8. The learned Advocate General also placed on record an order dated 25/03/2021 made by the NGT on a similar issue in an application filed by Trinitas Estate India LLR The order states that if there is any deficiency in the report of the expert committee, the challenge thereto can be by instituting appropriate proceedings and not by way of modification of the Tribunal's order made on 18/08/2020. Ultimately, the learned Counsel for Trinitas Estate India LLP prayed for leave to withdraw to the application before the NGT with liberty to file appropriate proceedings.

9. In the precise context of a challenge to orders made by the National Green Tribunal (NGT), the Division Bench of this Court comprising Dipankar Datta, Chief Justice, and M.S. Sonak, J in Writ Petition No. 127 of 2020 decided on 25/03/2021, held that an alternate statutory remedy is provided under the National Green Tribunal Act, 2010 and therefore, it will not be appropriate to entertain a Writ Petition. In the said decision, the Division Bench has considered the decisions of the Hon'ble Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India* [(2012) 8 SCC 326] and *Cicily Kallarackal* v. *Vehicle Factory* [(2012) 8 SCC 524] precisely in the context of entertaining writ petitions challenging orders made by NGT. After considering the various contentions raised on behalf of the State of Goa which was challenging the orders made by the NGT this is what was observed by the Division Bench:

> *"9. Despite the exceptions carved out by judicial pronouncements, to which reference has been made by Mr. Pangam, the decision in* Cicily Kallarackal *(supra), or for that matter, the decision in* Bhopal Gas Peedith Mahila Udyog Sangathan *(supra), does not keep any window open through which an order passed by the National Commission under the CP Act or the National Green Tribunal under the NGT Act could be subjected to challenge before a High Court. Apart from the fact that the author of the decisions in* Bhopal Gas Peedith Mahila Udyog Sangathan *(supra) and* Cicily Kallarackal *(supra) is the same, the common thread that runs through both the decisions is that the relevant enactments, i.e., the CP Act and the NGT Act are complete codes providing for rights and liabilities, with expert members constituting the Benches and the jurisdiction of the fora created by such enactments should not be allowed to be by-passed. Also, an adjudicatory body at the National level having been constituted under the relevant enactments providing remedy by way of an appeal before the Supreme Court against the orders passed by the National Commission and the National Green Tribunal, in such cases, the High Courts would be failing in the proper exercise of their*

jurisdiction if they were to entertain writ petitions against the orders of such adjudicatory bodies.

10. We are conscious that an appeal under Section 22 of the NGT Act is not a matter of right and an appeal can be entertained on one or more of the grounds mentioned in Section 100 of the Code of Civil Procedure. That, to our mind, by itself would not warrant interdiction by a writ Court. In fact, the decision in Centre for Environment Protection Research and Development *(supra) was rendered on an appeal under the NGT Act, and not on a writ petition. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact, is the statement of law found in the Constitution Bench decision of the Supreme Court reported in AIR 1962 SC 1621* (Ujjam Bai *v.* State of Uttar Pradesh). *Thus the distinction between an order inherently lacking jurisdiction and an error committed within the jurisdiction conferred would also assume importance and emerge for determination; however, it would indeed be a question of the extent of latitude the concerned Court is prepared to allow.*

11. In any event, Mr. Pangam has not been able to demonstrate that the orders in Bhopal Gas Peedith Manila Udyog Sangathan *(supra) and* Cicily Kallarackal *(supra) have been overruled, even impliedly by any larger Bench of the Supreme Court. Also, there has been no attempt to distinguish such decisions on any ground.*

12. Notwithstanding that we are bound by the ratio of the decisions cited by Mr. Pangam, technically, under Article 141 of the Constitution, we are equally bound by the decisions of the Supreme Court in Bhopal Gas Peedith Manila Udyog Sangathan *(supra) and* Cicily Kallarackal *(supra), the first of which deals with the enactment which is under consideration in the present case and the second which deals with an appeal available before the Supreme Court and is directly on the point.*

13. For the reasons aforesaid, we are disinclined to exercise jurisdiction in favour of the petitioners. The writ petition is dismissed. No costs. 1

14. This order shall not preclude the petitioners to avail the remedy of an appeal before the Supreme Court or review before the Tribunal, provided by the NGT Act, in accordance with law."

10. Now, *Radha Krishan Industries* (supra) has also set out the principles to be applied where the powers under Article 226 of the Constitution are invoked despite the availability of alternate and efficacious remedies to the petitioners. The principles have been summarized in paragraphs 28 as follows:

"The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ Jurisdiction, such a view would not readily be interfered with.

11. Mr. Pereira has submitted that this is a case of violation of the petitioners' fundamental right and also a case of violation of natural justice and therefore, the exceptions to the Rule of alternate remedy are available to the present petitioners.

12. According to us, the NGT was monitoring the issue of the demarcation of private forests in the State of Goa for quite some time. It is in pursuance of the orders made by the NGT that the Committee came to be appointed. Ultimately, the NGT has accepted the report of the Committee. Therefore, if any party, has any grievance against the orders made by the NGT on this issue, then, it is only appropriate that such parties, avail of the statutory remedy of appeal provided under the NGT Act. Even *Radha Krishan Industries* (supra) holds that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy

under Article 226 of the Constitution. This Rule of exhaustion of statutory remedies is a rule of policy, convenience, and discretion. In this case, the issue as to whether the Committee had to grant an individual hearing, the issue as to whether such hearing was sufficiently granted or not, whether the lands in question fulfilled the prescribed criteria for its determination as private forest, etc. are all matters which cannot be conveniently gone into by this Court in the exercise of its extraordinary jurisdiction. This is more so because the petitioners have an alternate remedy available to them. Even parties, at least prima facie, having similar grievances have already resorted to the alternative remedy provided under the NGT Act itself as was pointed out by both, the Learned Advocate General and Ms. Alvares, learned Advocate for respondent No. 4.

13. Mr. Pereira pointed out that in circumstances similar to that which the Petitioners are placed, this Court has admitted W.P No. 1560/2020. The said writ Petition was admitted before we made the order dated 25/03/2021 in W.P. No. 127 of 2020. Besides our order dated 4.11.2020 admitting W.P. No. 1560 of 2021 makes it clear that even the issue of maintainability was kept open, particularly since the petition was challenging the order of NGT and was admitted without notice to the private respondents.

14. Therefore, having regard to the order made by us in Writ Petition No. 127 of 2020 on 25/03/2021 and the circumstance that it is the NGT, which has been monitoring this issue for the last several years, we do not deem it proper to entertain the present petition. However, we make it clear that nothing in this order will preclude the petitioners from availing the remedies available under the NGT Act for redressal of its grievances.

15. With the aforesaid observations, we dismiss this petition. There shall be no order as to costs.

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Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.1690 OF 2021 (Filing No.)
IN
STAMP NUMBER MAIN NO.1560 OF 2020 (Filing No.)

THE GOA FOUNDATION, … Applicant
THR. ITS SECRETARY,
DR.CLAUDE ALVARES
Versus
STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS., …Respondents

Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant.

IN
STAMP NUMBER MAIN NO.1560 OF 2020 (Filing No.)

SALGAOCAR DEV. AND
CONSTRUCTION SERVICES
PVT. LTD., REP. BY ITS AUT. REP.,
JUSTINIANO J. DA COSTA. ...Petitioner
Versus
STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS ...Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav Amonkar and Ms. Gautami Kamat, Advocates for the Petitioner.
Mr. Prashil Arolkar, Additional Government Advocate for Respondent Nos. 1, 2, 3, 5 and 6.
Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.8.
Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant in MCA No.1690 of 2021 (F).

WITH
MISC. CIVIL APPLICATION NO.1686 OF 2021 (Filing No.)
IN
STAMP NUMBER MAIN NO.1561 OF 2020 (Filing No.)

THE GOA FOUNDATION, ...Applicant
THR. ITS SECRETARY,
DR.CLAUDE ALVARES
Versus
STATE OF GOA, THR. THE ...Respondents
CHIEF SECRETARY AND 9 ORS

Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant.

IN
STAMP NUMBER MAIN NO.1561 OF 2020 (Filing No.)

VARDHAN REAL ESTATES
PVT. LTD., REP. BY ITS
AUT. REP., JUSTINIANO J. DA COSTA. ...Petitioner
Versus
STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS. ...Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav Amonkar and Ms. Gautami Kamat, Advocates for the Petitioner.
Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1, 2, 3, 5 and 6.
Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.8.
Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant in MCA No.1686 of 2021 (F).

WITH
MISC. CIVIL APPLICATION NO.1689 OF 2021 (Filing No.)
IN
STAMP NUMBER MAIN NO.1562 OF 2020 (Filing No.)

THE GOA FOUNDATION,
THR. ITS SECRETARY,
DR.CLAUDE ALVARES ...Applicant

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS ...Respondents

Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant.

IN

STAMP NUMBER MAIN NO.1562 OF 2020 (Filing No.)

SALGAOCAR LEASING ...Petitioner
AND CREDIT COMPANY
PVT. LTD., REP. BY ITS
AUTH. REP., JUSTINIANO J. DA COSTA.

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS ...Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav Amonkar and Ms. Gautami Kamat, Advocates for the Petitioner.
Ms. Ankita Kamat, Additional Government Advocate for Respondent Nos. 1, 2, 3, 5 and 6.
Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.8.
Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant in MCA No.1689 of 2021 (F).

WITH

MISC. CIVIL APPLICATION NO.1688 OF 2021 (Filing No.)

IN

STAMP NUMBER MAIN NO.1558 OF 2020 (Filing No.)

THE GOA FOUNDATION,
THR. ITS SECRETARY,
DR.CLAUDE ALVARES ...Applicant

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS ...Respondents

Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant.

IN

STAMP NUMBER MAIN NO.1558 OF 2020 (Filing No.)

SALGAOCAR MARINE PVT. LTD., REP. BY ITS AUT. REP., JUSTINIANO J. DA COSTA. ..Petitioner

Versus

STATE OF GOA, THR. THE CHIEF SECRETARY AND 9 ORS. ...Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav Amonkar and Ms. Gautami Kamat, Advocates for the Petitioner.
Mr. Tukaram Gawas, Additional Government Advocate for Respondent Nos. 1, 2, 3, 5 and 6.
Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.8.
Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant in MCA No.1688 of 2021 (F).

WITH

MISC. CIVIL APPLICATION NO.1687 OF 2021 (Filing No.)

IN

STAMP NUMBER MAIN NO.1563 OF 2020 (Filing No.)

THE GOA FOUNDATION, THR. ITS SECRETARY, DR.CLAUDE ALVARES ...Applicant

Versus

STATE OF GOA, THR. THE CHIEF SECRETARY AND 9 ORS ...Respondents

Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant.

IN

STAMP NUMBER MAIN NO.1563 OF 2020 (Filing No.)

IDC HOLDINGS, THR. ITS PARTNER, ...Petitioners

SADIQ SHEIKH AND ANR.
Versus
STATE OF GOA, THR. THE
CHIEF SECRETARY AND 9 ORS ...Respondents

Mr. Shivan Desai, Advocate for the Petitioners.
Mr. Prashil Arolkar, Additional Government Advocate for Respondent Nos. 1, 2, 3, 5 and 6.
Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.8.
Ms. Norma Alvares and Ms. Anamika Gode, Advocates for the Applicant in MCA No.1687 of 2021 (F).

CORAM: M. S. SONAK &
SMT. M. S. JAWALKAR, JJ

DATED: 28th September 2021

P.C.

1. These Misc. Civil Applications have been taken out by one of the Respondents i.e. Goa Foundation, in the following Writ Petitions.

(1) Stamp Number Main No. 1560 of 2020 (Filing No.);
(2) Stamp Number Main No. 1561 of 2020 (Filing No.);
(3) Stamp Number Main No. 1562 of 2020 (Filing No.);
(4) Stamp Number Main No. 1558 of 2020 (Filing No.);
(5) Stamp Number Main No. 1563 of 2020 (Filing No.).

2. Misc. Civil Applications urge that the aforesaid Writ Petitions may be dismissed, if necessary, by relegating the Petitioners to avail alternate remedy in terms of the National

Green Tribunal Act, 2010. The Applicants rely on the decisions of this Court in ***Pedro Januario Carlos Barreto and Another V/s State of Goa and others***[1], and ***Directorate of Mines and Geology and others Vs Saidas Khorjuvekar and others***[2]**.** It is the case of the Applicants that in quite similar circumstances, at least two Benches of this Court refused to entertain the writ petitions but relegated the Petitioners to avail of an alternate remedy under the NGT Act.

3. There is no dispute that the aforesaid five petitions were admitted by this Court *inter alia* vide order dated 04.11.2020. But the issue of maintainability was kept specifically open because at the stage of admission some of the private parties, including the Applicants herein had not been served.

4. Ms. Gode relying upon *Pedro Barreto* (supra) and *Directorate of Mines* (supra) submitted that all these five writ petitions are liable to be dismissed, if necessary, by relegating the Petitioners to avail of an alternate remedy under the NGT Act. She relies on the reasoning in the aforesaid two decisions and further points out that in similar circumstances, the appeals instituted by the parties have been entertained by the Hon'ble Supreme Court. She also pointed out that the appeal instituted

1 Writ Petition No.1513 of 2021 (Filing) decided on 26th July 2021

2 Writ Petition No.127 of 2020 decided on 25th March 2021

by the State of Goa was dismissed by the Hon'ble Supreme Court.

5. Mr. Sardessai and Mr. Shivan Desai submit that the decisions of the two Division Benches in *Directorate of Mines* (supra) and *Pedro Barreto* (supra) are *per incuriam* and therefore, no reliance can be placed on the same. They submit that even the decisions of the Hon'ble Supreme Court in the case of ***Cicily Kallarackal vs Vehicle Factory***[3]**,** and ***Mehra Bal Chikitsalaya Evam Navjat Shishu I.C.U. vs Manoj Upadhyay and Others***[4] are also *per incuriam*. They submit that the decisions of the Division Bench of this Court as well as the aforesaid decisions of the Hon'ble Supreme Court are not quite consistent with the spirit of what has been laid down by the Hon'ble Supreme Court in ***Rojer Mathew Vs South Indian Bank Limited and others***[5]**.** They point out that even though *Rojer Mathew* (supra) was referred to in *Directorate of Mines* (supra), the same was neither considered nor discussed in sufficient detail. They submit that the observations in paragraphs 194 to 218 of *Rojer Mathew* (supra) make it clear that the practice of providing direct appeals to the Hon'ble Supreme Court from the decisions of the Tribunals has been deprecated. They submit that there can be no dispute about the scope and

3 (2012) 8 SCC 524

4 SLP No. 4127/2021 decided on 06.11.2020

5 (2020) 6 SCC 1

width of the powers of the High Court under Article 226 of the Constitution of India and further, such powers can never be taken away because they are part of the basic structure of the Constitution of India as held in ***L. Chandra Kumar Vs Union of India and others***[6]. The learned counsel, therefore, submit that the decisions relied upon by the Applicants may therefore not be followed and the applications may be dismissed.

6. The learned counsel pointed out that the decision of the Hon'ble Supreme Court in the case of ***Bhopal Gas Peedith Mahila Udyog Sangathan Vs Union of India***[7] is distinguishable because that was a matter which was concerning the exercise of original jurisdiction by the NGT. They submitted that *Cicily Kallarackal* (supra) and *Mehra Bal Chikitsalaya Evam Navjat Shishu* (supra) are *per incuriam* because they do not consider the law laid down by the Hon'ble Supreme Court in ***Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and others***[8]. They point out that a similar view was reiterated by the three-Judge Benches of the Hon'ble Supreme Court recently.

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6 (1997) 3 SCC 261

7 (2012) 8 SCC 326

8 (1998) 8 SCC 1

7. The learned counsel relied on ***State of U.P. and another Vs Synthetics and Chemicals Ltd. and another***[9]**,** and ***Jayant Verma and others Vs Union of India and others***[10] to submit that the decision which is *per incuriam*, is not binding and can be ignored without breaching the convention of judicial discipline. The learned counsel point out that in this case the principles for the entertainment of writ petitions even where alternate remedy may be available are attracted.

8. Mr. S. Desai pointed out that since the Forest Act is not one of the legislations specified in the Schedule to the NGT Act, it is possible to contend that the Petitioners do not even have any remedy before the NGT.

9. For all the aforesaid reasons, the learned counsel submitted that the Misc. Civil Applications taken out by the Goa Foundation may be dismissed and this Court proceeds to decide the writ petitions on their own merits.

10. We have considered the rival contentions together with the decisions relied upon by the learned counsel for the original Petitioners in these matters.

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9 (1991) 4 SCC 139

10 (2018) 4 SCC 743

11. At the outset, we must say that there are no distinguishing features between the case of *Pedro Barreto* (supra) and the present petitions. There, in quite identical circumstances, and after considering the similar contentions, we followed the decision in *the Directorate of Mines* (supra) and declined to entertain the said writ petition. However, we made it clear that nothing in the said decision will preclude the Petitioners from availing the remedies available under the NGT Act for redressal of their grievances.

12. Therefore, by applying the same reason as was applied in *Pedro Barreto* (supra), we are quite obliged to dismiss these petitions as well leaving it open to the original Petitioners to avail of remedies provided to them under the NGT Act.

13. As in *Pedro Barreto* (supra), even in the present petitions, the action impugned by the Petitioners is nothing but a fallout of orders and directions made by the NGT in the proceedings before it. The record indicates that the NGT was monitoring the issue of demarcating private forest in the State of Goa for quite some time. It is in pursuance of the orders made by the NGT the committee came to be appointed to give a report. Ultimately, it was the NGT that accepted the report of the committee. Therefore, if any party has any grievance of the orders made by the NGT appointing such committee and

accepting the report made by such committee then, it is only appropriate that such party avails of statutory remedies available under the NGT Act.

14. In *Pedro Barreto* (supra), the learned counsel for the Petitioners had relied upon the orders granting rule in these petitions to urge for parity. However, in the judgment and order dated 26.07.2021, it was noted that these petitions have been admitted but the issue of maintainability was specifically kept open. Further, it was noted that these petitions were admitted before this Court disposing of *Directorate of Mines* -Writ Petition No.127 of 2020 by order dated 25.03.2021.

15. In *Directorate of Mines* (supra)- Writ Petition No.127 of 2020, the Division Bench of this Court (Dipankar Datta, CJ & M. S. Sonak, J) considered the issue of alternate remedy against the orders of NGT in quite some detail and upon analyzing several decisions including that of *Rojer Mathew* (supra) held that the petition was not entertainable and the parties were directed to avail the remedy under the NGT Act.

16. Before us today, the very same contentions which were raised when we decided the *Directorate of Mines* (supra) - Writ Petition No.127 of 2020 were canvassed. The only additional submission now made was that the decisions of the Hon'ble

Supreme Court that we had relied upon in *the Directorate of Mines* (supra) are also *per incuriam.*

17. We have considered the arguments based on *per incuriam*. However, we are not persuaded to hold that the decisions of the Hon'ble Supreme Court relied upon by us in *Directorate of Mines* (supra) are themselves *per incuriam*. This doctrine of *per incuriam* cannot be invoked by pointing out that some arguments were not considered or that some earlier judgment of the Hon'ble Supreme Court was misconstrued.

18. The contention based on the "*spirit of observations*" in *Rojer Mathew* (supra) is also not sufficient for us to hold that the judgments of the Hon'ble Supreme Court relied upon by us in *Directorate of Mines* (supra) or *Pedro Barreto* (supra) are themselves *per incuriam*. Although, the Hon'ble Supreme Court did indeed make some strong observations on the tendency to provide for direct appeals to the Hon'ble Supreme Court against the orders of the various tribunals, ultimately, at paragraph 218, the Hon'ble Supreme Court held that it is high time that the Union of India, in consultation with either Law Commission or any other expert body, revisit such provisions under various enactments providing for direct appeals to the Supreme Court against the orders of the tribunals and instead provide appeals to the Division Benches of High Courts, if at all

necessary. The Union of India was directed to take such an exercise expeditiously and preferably within six months and place the findings before the Parliament for appropriate action as may be deemed fit.

19. The principles set out in *Whirlpool Corporation* (supra) admit of no dispute whatsoever. However, we have indicated detailed reasons as to why in petitions similar to present petitions, it is only appropriate that the parties are relegated to avail of an alternate remedy under the NGT Act. Such reasons, are to be found in our decision in *Pedro Barreto* (supra). Similarly, the contention of Mr. S. Desai that the Petitioners whom he represents does not even have any alternate remedy before the NGT is not proper. As noted earlier, the NGT was virtually monitoring the issue of private forest in the State of Goa and it is based on the orders made by the NGT from time to time the committee came to be constituted, and ultimately the report of the committee was also accepted by the NGT.

20. Therefore, as long as legal provisions are not amended, it will not be appropriate for us to hold that the decisions of the Hon'ble Supreme Court are *per incuriam* because they are against the spirit of observations in *Rojer Mathew* (supra). The rulings relied upon on the question of *per incuriam* do not hold that the decisions of superior Court are to be readily held as

per incuriam by the High Court because some arguments or some shade of an argument may not have specifically been considered.

21. For all the aforesaid, including in particular the reason that there is no substantial difference between the position in *Pedro Barreto* (supra) and the present petitions, we allow these Civil Applications and dismiss the writ petitions under Stamp Number Main Nos. 1560 of 2020 (F), 1561 of 2020 (F), 1562 of 2020 (F), 1558 of 2020 (F), and 1563 of 2020 (F). However, we make it clear that such dismissal will in no manner preclude the Petitioners from availing of the remedy provided under the NGT Act.

SMT. M. S. JAWALKAR, J **M. S. SONAK, J.**

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH Date: 2021.09.30 11:00:38 +05'30'

ANNEXURE 5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1 OF 2021

STATE OF GOA & ANR. **Appellant(s)**

VERSUS

GOA FOUNDATION & ORS. **Respondent(s)**

O R D E R

We find no ground to interfere with the impugned order passed by the Tribunal. The appeal is, accordingly, dismissed.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[ANIRUDDHA BOSE]

New Delhi;
February 01, 2021.

ITEM NO.19 Court 3 (Video Conferencing) 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 No(s). 1/2021

THE STATE OF GOA & ANR. Appellant(s)

VERSUS

GOA FOUNDATION & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.20/2021-STAY APPLICATION)

WITH
C.A. No. 121/2021 (XVII)
(FOR ADMISSION and I.R. and IA No.8425/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.8424/2021-STAY APPLICATION)

Date : 01-02-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s) Mr. Aman Lekhi, ASG
Mr. Nalin Kohli, Adv.
Ms. Ruchira Gupta, Adv.
Mr. Shishir Deshpande, AOR
Ms. Sriharsha Peechara, Adv.
Mr. Anurag Sharma, Adv.
Mr. Ritwiz Rishabh, Adv.
Mr. Aniket Seth, Adv.
Ms. Nimisha Menon, Adv.

Mr. Dhruv Mehta, Sr. Adv.
Mr. Ninad Laud, Adv.
Ms. D'Costa, Adv.
Mr. Sahil Tagotra, AOR

For Respondent(s)

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

Civil Appeal No. 1 of 2021

The appeal is dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

Civil Appeal No. 121 of 2021

Issue notice.

The parties are directed to maintain status quo, as on today, confined to the appeal.

(JAYANT KUMAR ARORA)
COURT MASTER

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed order is placed on the file)