BEFORE THE NATIONAL GREEN TRIBUNAL

APPLICATION NO. 166/2024 (WZ)

Nusli Neville Wadia .... Applicant

V/s.

State of Maharashtra & Others .... Respondents

Affidavit in Reply on behalf of Respondent No. 7

I, Sanjay Shreeniwas Shenolikar, Age - 58 yrs. Occupation – Service, Authorised Representative of Respondent No.11, having office at 2nd Floor, Opp. Khar Telephone Exchange, Khar (West), Mumbai 400052 do hereby state on solemn affirmation as under –

1. I am the authorized Representative of Ferani Hotels Pvt. Ltd. Enclosed herewith is a copy of the Board Resolution No.7/2024 dated 16/08/2024 as **Annexure R-1** authorizing me to represent Respondent No.7 in the above matter. I have read the application filed by the Applicant, which was served on Respondent and I am filing the affidavit in reply.

2. At the outset, I state that Respondent No.8, 9 are neither a necessary party nor a proper party to the present Application. The Application is bad in law for mis-joinder of parties and its name should be deleted.

3. I say that on the following grounds the application under reply is not maintainable:–

3.1 Limitation – The copy of present application is provided which does not bear the date on which it was signed, however, in the limitation clause Applicant has relied upon the provisions of Section 15 of the National

Green Tribunal Act without mentioning the precise date of the first cause of action. However, intentionally the date and year have not been stated by the Applicant. For applying Section 15 of the National Green Tribunal Act, 5 years limitation is prescribed from the date of cause, however, the applicant has not given dates and particulars either by having a clause of cause of action or in clause under the title "Limitation". I say that the development on the plot bearing CTS No.827A/4A/1 of Village: Malad [East]was commenced in the year 1997 i.e. for more than the last two decades. Some of the buildings have been completed and haveexisted since then while the balance work is in progress. I say that the Petitioner is aware about the development work on the land since inception and therefore he was bound to disclose and give details of the dates, months and year of the development and in the absence of the same, the present petition will not be maintainable.

3.2 No Jurisdiction - Applicant has pleaded in the application that the trees are illegally felled, however, no substantial evidence is produced on record for justifying the allegations. The documents upon which the Applicant is relied upon at Annexure B and Annexure C cannot fasten the liability upon the Respondent. Moreover, Annexure C on perusing, it reveals that, FIR is filed as per the provisions of Maharashtra Urban Protection & Preservation of Trees Act, 1975, however, as per the provisions of National Green Tribunal Act 2010 Schedule I does not include the said Act. Without admitting the contents of correctness of Annexure B and Annexure C, if, Applicant wants to rely upon Annexure B and C, the Hon'ble Tribunal has no jurisdiction to entertain the grievances raised.

3.3 Res Judicata –

a. Applicant is seeking the directions "direct the Respondent Authority stop / cancel all the permissions/sanction for the proposed and or under way construction on the said land parcel for restoring the land parcel to its original green cover". It is further submitted that, another relief sought "pending hearing and final disposal of this application stay/stop all the permissions / sanction for proposed and or under way construction on the said land." In fact, the Applicant has filed suit No. 1628/2008 before the Original Side of Hon'ble High Court Bombay against Respondent No.9 with the prayer of injunction regarding the development activities on the Suit land. The subject matter of this petition before this Hon'ble Tribunal and in the aforesaid suit is one and the same. The same Petitioner had tried to have an injunction about the development activities by Respondent No.7 in the suit referred to above. The Ld. Single Judge of Bombay High Court before whom the suit was filed did not grant the injunction sought by the petitioner.

b. However, this order was challenged before the Hon'ble Division Bench of Bombay High Court and the Hon'ble Division Bench of Bombay High Court in Appeal No.817/2010 filed by Ferani Hotels Pvt.Ltd. by allowing the appeal, set aside the order of Single Judge dtd. 19/7/2010 in Suit No.1628/2008& declined to stay the development of the lands by Respondent no. 7.This order was challenged by the petitioner before the Hon'ble Supreme Court in Civil Appeal No.3396/2015 arising out of SLP(C) No 24880/2012. The Hon'ble Supreme Court did not interfere with the order of

Division Bench of Bombay High Court regarding the development activities carried out by the Respondent No.7Ferani Hotels Pvt. Ltd.

c. It is further submitted that even after the decision Curative Petition (Civil) No. 194/2021 and Review Petition No. 2856/2015 in Civil Appeal No.3396/2015 the order of the Division Bench of Bombay High Courtregarding the rights of this Respondent No.7 Ferani Hotels Pvt. Ltd. has not been interfered, altered or set aside.

d. This Respondent says that Petitioner has purposely not disclosed in the Petition all the details about the proceedings before the Bombay High Court in Suit No. 1628/2008 and the order passed, which will show that, even though Petitioner has simply referred the pendency of the suit before the Bombay High Court by suppressing the order passed by the Hon'ble Division Bench of the Bombay High Court in Appeal No.817/2010, Petitioner is guilty of suppressing important facts and documents with the sole intention to get some interim order against this Respondent and therefore entire petition is liable to be dismissed on this ground itself.

The present Application No. 166/2024 consists of averments related to only three issues almost identical to that of application no 100/2024 filed by Vanashakti & Ors against these respondents and are dealt with as described hereunder.

a.i. **Hill Cutting:** It is submitted that for the purpose of development, the developer is required to carry out excavation for the foundation of the structure, to lay the roads, to make the provision for water supply, gas

lines and provision for electricity lines, to lay the sewer and manage the storm water and drain system etc. and for that purpose the land leveling/ plateauing is required, which was being carried out as per the sanctions issued by the Planning Authority from time to time as per the provisions of prevailing Development Control Regulations. The contention of the Applicant that the hill is cut is baseless and without any proof. The contention that rampant hill cutting is going on is baseless and without any cogent evidence. The development of buildings including laying infrastructure is covered under the provisions of the M.R.T.P Act. It is submitted that as per Notification under No. S.O.3645 (E) dtd.5/12/2016,the construction activities are not prohibited activities and are covered under regulated activities. It may be noted that no construction of prohibited activity of any kind is proposed/commenced or carried out within the Eco-Sensitive Zone by this Respondent. As per the said Notification, construction is permitted within the Eco-Sensitive Zone as per provisions of sanctioned Development Plan and other applicable rules and regulations under the Maharashtra Regional Town Planning Act. Respondent No. 7 has already obtained the permission of SGNP ESZ Monitoring Committee for proposed development on the land under reference. The Applicant has not produced any document on record for substantiating his claim.

a.ii. It is further respectfully submitted that, Petitioner is determined to obstruct the rights of Respondent No. 7 Ferani Hotel Pvt. Ltd. about development activities as per the agreement dated 2nd January 1995 and for that purpose as stated above initially Petitioner has filed suit no. 1628/2008 before the Hon'ble High Court and sought injunction

against development of lands by Respondent No.7 in the proceeding before Single Judge, thereafter before Division Bench and thereafter before the Hon'ble Supreme Court. When he could not succeed in getting injunction, Petitioner is trying to make false story, false grounds of illegal hill cutting, illegal tree cutting, illegal deforestation and illegal construction and change of natural course of water bodies. In fact, neither the expert agency as claimed by the Petitioner has any authenticity of carrying out inspection and submitting report nor this Respondent was party to the inspection work of so called expert agency. This Respondent does not admit and acknowledge the authenticity, correctness, legality and validity of the report as submitted at Exh. L-1. That even the report submitted by the Committee appointed by this Tribunal in O.A.No.100/202024 does not confirm the finding of so-called expert committee report at Exh. L-1.

b) **Tree cutting& Illegal Deforestation :** The land comprises of open plateaus and since many years only shrubs and grass have been in existence and no trees were there. No trees existed on the said land except the trees planted by Respondent No.7, hence the question of felling and or burning of trees does not arise. In fact, this Respondent has presently planted about 1003 trees. The Staff of Garden Department of Brihanmumbai Mahanagarpalika have inspected the said land and acknowledged the fact that 1003 trees have been planted. Further tree plantation shall be carried out as per provisions of DCPR 2034 and as per Maharashtra (Urban Area) Protection & Preservation of Tree Act 1975. In this context, the Panchnama dated 13/12/2022 attached with the application as Exhibit E is quite self explanatory. The said Panchnama was done after due site inspection

and was duly signed by Panch wherein it is clearly mentioned that Panch have not found any tree cutting.

c) **Change of Natural Course of Water Bodies -**

The water stream which is a natural drainage channel running through the said land is locally known as "Walbut Nalla" and the same is not a river, without admitting that it is a Nalla for sake of reference it is mentioned as a Nalla as it is loosely referred as a Nala. As there is no dedicated water source to the said Nalla, the only source of water is the seasonal rains and hence the said Nalla gets water only in the rainy season which it drains down to the lower area of land. After the rains are over, the Nalla remains completely dry for the rest of the year. The flow of the water is not obstructed in any manner. There is no obstruction and/or reduction of the Walbut Nalla carried out by this Respondent. The natural flow of the said nalla is maintained without any obstructions which is visible to the naked eye as is evident from the photograph annexed herewith as **R-2**. The plot is shown affected by nalla as per sanctioned D.P. 2034. As per policy note No.26 of Govt. Notification dated 08.05.2018, the existing features shown on the Development Plan are indicative and stands modified on Development Plan as per actual position. Further, the alignment of Nalla shall be as per the measurement plan of land records. In light of the note printed on D.P. Sheet, the alignment of Walbut Nalla which is shown on the D.P.Plan shall be considered as per remarks given by SWD. The nalla shall be trained as per the remarks/directions of SWD department of BMC.

d) **Illegal Construction** - As a matter of fact, this Respondent is carrying on the construction as per the permission which has already granted. The B.M.C. has issued IODs in the year 1996 and subsequently occupancy certificates were also issued by the Planning Authority to some of the buildings as per rules, and regulations. As a matter of fact, Applicant is well aware about the development carried out by the Respondent, third party interest created by the Respondent which is disclosed in the litigation pending before the Hon'ble High Court Bombay. The Applicant is well aware about the Development and third party interest created and despite of this fact Applicant is stating there is illegal construction which is nothing shorter than practicing fraud upon the Tribunal.

4 **Facts of the Case** – Respondent No.7 is a Private Limited Company and has completed various Housing Projects in and around Mumbai.

4.1 It is submitted that in the year 1995 agreement was entered into between the Administrator (representing the Estate of Late E.F. Dinshaw) and Respondent No.7 is in possession of land bearing CTS No.827A/4A/1 of Village: Malad, Malad [East] in its capacity as Developer(hereinafter referred to as "the said land").

4.2 **History of Litigation with Applicant –**

It is submitted that dispute between Applicant and this Respondent arose and litigations were pending before the Hon'ble High Court Bombay and Supreme Court. It is submitted that the development agreement and power of attorney were non-terminable and non-

revocable as per the provisions of Section 16(a) and 16(d) of the Development Agreement and Power of Attorney, however, in spite of this fact, the Administrator of Applicant purported to terminate the Development Agreement and revoke Power of Attorney, which is totally illegal and the said action on part of Administrator is not binding on this Respondent, which was communicated to the Administrator. It was communicated to the Administrator that Development Agreement and Power of Attorney is in continuation. Despite of these facts, Administrator has filed suit bearing No.1628 of 2008 on 13/5/2008 seeking number of reliefs against the Respondent. In the said suit Administrator has sought various reliefs along with an injunction Justice Roshan Dalvi passed the order on 24/06/2010 which was pronounced on 19/07/2010; the said order was challenged by the Respondent No.7 before the Division Bench of Hon'ble High Court Bombay in Appeal bearing No. 817/2010. The Applicant had also preferred an Appeal bearing No. 806/2010 in which the Hon'ble High Court has passed a common order vide order dated 19/7/2012 by which Appeal filed by the Respondent No.7 was allowed and the order passed by the Single Judge dated 19/07/2010 is set aside. A copy of the order is annexed herewith as **Annexure R** 3 and the Respondent no. 7 wants to rely upon the same. Various directions were given in the appeal by the Appellate Court. The order passed in appeal was further challenged by the petitioner in the Supreme Court by filing SLP which was dismissed on 8/4/2015. A copy of the order passed by the Hon'ble Supreme Court is annexed herewith as **Annexure R-** 4 . The Review Petition No. 2856/2015 is also filed before the Hon'ble Supreme Court which was disposed off vide order dtd.6/5/2022. The Curative Petition No. 193-194/2021 was also

dismissed vide order dated 19/07/2022. A copy of the orders is annexed herewith. It is pertinent to note that the Hon'ble Supreme Court has not granted any relief to the Administrator restraining this Respondent from carrying on construction or selling premises. The Applicant has also claimed damages in the amount of Rs1370.06 Crores thus it can be seen that one way or other Nusli Wadia wants to pressurize this respondent to comply with his wrongful demands. It is pertinent to note that Administrator for last 16 years is trying to obtain the relief from the Hon'ble High Court and Supreme Court. However, no relief restraining this Respondent was granted in favour of the Administrator. The orders passed by the Hon'ble High Court Bombay and Hon'ble Supreme Court are binding upon the Administrator. It is respectfully submitted that this Respondent is entitled to carry out development on the land and is entitled to exercise the powers which are granted by the Power of Attorney. The intention of the Appellant for approaching the Hon'ble Tribunal is to wrongfully stall the development of the project and or create hurdles in developing the land under the development agreement.As the Applicant was not successful in obtaining prohibitory orders for the development, the present Application is filed under the pretext of protection of environment. The present litigation is a Forum shopping litigation.

4.3 Development Work carried out at the Site –

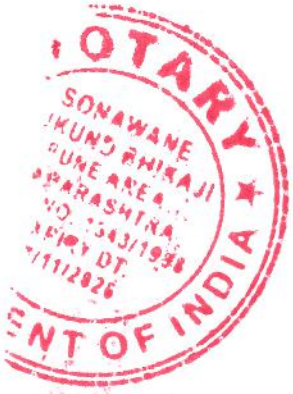
a. It is submitted that for the purpose of development of the said land, the developer is required to carry out leveling / plateauing, excavation for the foundation of structures to lay the roads, lay the water supply,

gas lines and provision for electricity lines, lay the sewer and storm water drain system etc., which is being carried out as per the sanctions issued by the Planning Authority from time to time as per the provisions of prevailing Development Control Regulations.

b. Respondent No.7 has completed 05 buildings as per the sanctioned issued by Planning Authority for which occupancy certificates has been issued by planning authority.

c. Thereafter Respondent No.7 has created third-party interest with respect to some of the buildings which are constructed and the consideration which is required to be paid is paid.

d. The Respondent has carried out the development as per rules and regulations. It may be noted that upon the said land, there are shrubs and there are no grown up trees. In fact, this Respondent has presently planted about 1003 trees. The Staff Garden Department of Brihanmumbai Mahanagarpalika have inspected the said land and acknowledged the fact that 1003 trees are planted. The letter issued by Garden Department of Brihanmumbai Mahanagarpalika is **Annexure R.**6. The photographs of planted trees are also annexed herewith as are **Annexure R.** 7.



4.4 It may be noted that upon perusing the Google image of the said land does not show any river. The development of access / roads can be seen. The said land has shrubs and grass and the same can be seen from the Google image whereas the Sanjay Gandhi National Park has dense trees. Therefore the type of green cover with respect to the said land and the SGNP looks different. It is submitted that the entire area along the boundary around SGNP looks different which includes said lands thus it can be safely concluded that the said lands along the

boundary of SGNP was in its nature originally different. Further there exists Nalla on the said land. As there is no dedicated water source to the said Nalla, the only source of water is the seasonal rains and hence the said Nalla gets water only in the rainy season which it drains down to the lower area of land. After the rains are over the Nalla remains completely dry for the rest of the year. The flow of the water is not obstructed in any manner which is visible to the naked eye.

4.5 **Police Housing Situated between the said land and SGNP** - It is submitted that in respect of the adjoining land to the North East side between Respondent No.7's land and SGNP, a notification dated 5/4/2016 is issued by the Government of Maharashtra u/s 37 (1AA) (c) of the MRTP Act. It is notified vide said notification that the Land bearing Survey No.239/1 (part), CTS No.827A/4A/2 of Village Malad (East) adm. about 80934 sq.mtrs. is deleted from No Development Zone and included in the Residential Zone of Police Housing along with 18 meter 18-meter-wide road. The said public road providing access to the Police Housing Plot passes through the said land, running parallel to the boundary of SGNP, which falls within 100 meters from ESZ. Brihanmumbai Mahanagarpalika is carrying out the excavation for the development of 18.30 meter wide D.P.Road out of S.No.239/H.No.1(Part), CTS No.827A/4A/1(Part) of Village Malad East in P/North Ward. It may be noted that the Planning Authority i.e. BMC is in the process of developing the said D.P. Road to provide access for Police Housing. A copy of the notification dt.5/4/2016 issued by the Government of Maharashtra u/s 37 (1AA) (c) of the MRTP Act is annexed herewith as **R-8**

4.6 It is submitted that Respondent No.7 has already obtained the permission of Sanjay Gandhi National Park Eco Sensitive Zone Monitoring Committee for proposed development on the said land within ESZ, a copy of the NOC letter dt.1/11/2018 which is annexed as **Annexure R.** 9 .

4.7 **Hill Cutting** - The Dindoshi range does not spread across the suburbs of the city of Mumbai. The characteristics of the said land do not consist of an ecosystem similar to that of SGNP. No hill cutting is being carried out on the land under reference by Respondent No. 11. I say that the said land comprises open plateaus and for many years only shrubs and grass have been in existence and no trees were there. I say that the land under reference is not a forest and the activities/development is permissible/ permitted as per the provisions of the Development Control Rule 1991 and also as per Development Control and Promotions Regulations 2034. Plateauing / Levelling / filling / excavation for development of buildings, access, roads, and infrastructure is permissible as per law. There is no prohibition for the development of the said land for users / activities as per the sanctioned D.P. & as per provisions of Development Control Regulations for the City of Mumbai. The development on hilly terrains is also permissible as per the judgment of the Hon'ble Supreme Court order dated 14th July 2020 in the reported case of ***The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch & Ors. reported in AIR 2020 SC 3471.*** The said land is part of the sanctioned Development Plan for the Mumbai and the development thereof is governed by the sanctioned regulations.

5 At the outset, I say that the Applicant is not entitled to any relief as the Applicant has not approached this Hon'ble Court with clean hands. The present Application is malicious and an attempt to single out Respondent No. 7.

6 Without prejudice to the aforesaid contention, these respondents are submitting their Para-wise reply as follows-

6.1. In view to avoid the reproduction of each and every allegation from the application and traversing the same, suffice it to say that contents and allegations of the application which are not specifically admitted hereunder and which are against the tenor of this written submission/affidavit may be deemed to be specifically denied by these Respondents.

6.2. I say that the present application does not disclose the cause of action for instituting the application by invoking provisions of u/s. 14 and 15 of the National Green Tribunal Act 2010 seeking the intervention of this Hon'ble Tribunal to direct the Respondents to take effect, punitive and remedial steps against the act of illegal cutting/felling of trees, illegal deforestation, illegal construction, hill cutting and changing the natural course of river and therefore the same is required to be dismissed. I do not admit the contents that Applicant is raising substantial questions and seeking relief, compensation and restitution in relation to the Environment and interalia is arising out the Forest (Conservation)Act 1980, The Air (Prevention and Control of Pollution) Act, 1980, The Water (Prevention and Control of Pollution) Act 1974, The Biological Diversity Act, the 2002.

6.3. I do not admit the contents of Para (i) of facts in brief narrated by the Applicant, whatever is not specifically admitted hereinafter shall deem to be denied in toto. By an Agreement dtd.2nd January 1995 (as modified by a supplementary agreement dated 12th April, 1995) (Agreement) executed by the Applicant in favour of Ferani Hotels Private Limited (Ferani) development rights of land as more particularly CTS No.827 (Pt) Survey no.239(Part) at Malad (said land) forms a part of the larger land for which the Applicants had given the development rights to Respondent No.7 and in furtherance of the Development Agreement, two unregistered Power of Attorneys both dated 2nd January 1995 (said POAs) were also executed by the Applicant, inter alia, in favour of Mr. Sandeep G Raheja and Ms.Sonali G Raheja (Rahejas).

6.4. I do not admit the contents of (ii) of Facts of the case narrated by the Applicant. I do not admit the contents that on 12th May 2008, due to various frauds perpetrated on Applicant by Ferani the Rahejas and their late father, Gopal L Raheja as also breach of the Fundamental agreement between the parties, the Applicant terminated the Development Agreement dated 2nd January 1995 and the said POAs and in view of such termination and renovation Ferani/Rahejas are not entitled to act under the Development Agreement and said POAs interalia are not entitled to exercise any powers under Development Agreement and said PoAs and develop the said land in any manner. It is a matter of fact the said issue is sub-judice before the Hon'ble Bombay High Court in Suit No.1628 of 2008. The Applicant has further initiated criminal actions against the Ferani and Rahejas in this regard. Since the matter is civil matter which is 'subjudice' in Hon'ble

High Court, these Hon'ble NGT has no jurisdiction entertain the same.

6.5. I do not admit the contents of para (iii) of facts of the case pleaded by the applicant that on 7th October 2022, the Applicant came across a newspaper article that stated that over 560 trees in Goregaon Greens had been illegal chopped on a private plot being developed by Ferani and Rahejas without obtaining proper approvals from the authorities and further it was stated that in spite of the complaint filed with MCGM Authorities MCGM have not taken any actions.

6.6 I say that the contents of Para (iv) of facts of the cases pleaded by the Applicant are the distorted version of the facts. I say that as per the information the concerned authority has filed C-Summary report after investigating the F.I.R.

6.7 I say that the contents of Para (v) of facts of the cases pleaded by the Applicant are the distorted version of the facts. I do not admit the contents that with respect to letter dtd.9/11/2022 written by Applicant to various officials on account of lack of personal knowledge. It is part of the record that in view of 1995 agreement Ferani Hotels Private Limited and Raheja's are in possession of the land CTS 827A (Part) on Survey No.239 (Part) adm.1639228 sq.mtr., however, I do not admit the contents that these respondents have violated the environmental laws by illegally cutting trees with the intention to exploiting the land and construct the buildings thereon. I say that Respondent No.7 is in possession of the land and it is developing the same as per the sanctions accorded by various authorities including

Planning Authority. I say that ESZ NOC for development of portion of the land under reference within ESZ has been issued by ESZ monitoring committee.

6.8 I say that the contents of Para (vi) & (vii) of facts of the cases pleaded by the Applicant are the distorted version of the facts. I say that Applicant may be put to the strict proof that Sanjay Gandhi National Park is a dense forest however despite the said premises sharing it's boundary with the dense forest it's flora, fauna, etc. appeared contrasting to its adjoining forest and resembled a bare piece of land almost like barren patches due the illegal cutting of trees. It is submitted that the entire area along the boundary around SGNP looks different which includes said lands thus it can be safely concluded that the said lands along the boundary of SGNP was in its nature originally different. I say that Applicant may be put to the strict proof with respect to the contents that such enormous dissimilarities between the two adjoining premises (sites) which are forestry and jungle-like in nature are not only unnatural and unusual but also evidently man made. I do not admit the contents that on perusal of the satellite images, it is clear that Ferani and the Rahejas have not only carried out illegal tree cutting and deforestation but have also carried out illegal hill cutting, changing the natural course of water and illegal development and tree burning. The Applicant is put to the strict proof with respect to contents that "Thus, should Ferani or the Raheja have even purported to seek permission from any authority in relation to the felling of trees on the said Lands (of which the Applicant is unaware), the same would have been illegal, void and of no effect whatsoever. The Applicant has not consented to the seeking

or the grant of any permission for the felling of trees on the said lands." I do not admit that Respondent No.7 has committed an act of felling of the trees.

6.9 I say that the contents of Para (viii to x) of facts of the cases pleaded by the Applicant are the distorted version of the facts. The Panchnama was carried out on 13/12/2022, however, it is incorrect to say that Panchnama is contrary to the true and correct facts. I say that the Panchnama dated 13/12/2022 attached with the application as exhibit E is quite self explanatory. The said Panchnama was done after due site inspection and was duly signed by Panch wherein it is clearly mentioned that Panch have not found any tree cutting.

6.10. The Applicant is put to the strict proof with respect to contents of (xi) of facts of the case. Applicant is put to the strict proof with respect to contents that on 15th December 2022, the representative of the Applicant was called to the forest office and shown Panchanama purportedly prepared on 13th December 2022 and was asked to put his signature on the said Panchanama however the representative refused to sign the same as he was not allowed to remain present during the inspection of the said land. I do not admit the contents that Applicant realized that the entire Panchanama was false and prepared only to suit Ferani/the Rahejas. I do not admit the contents that in all probability, given the ground reality, the same was prepared collusively.

6.11 The Applicant is put to the strict proof with respect to contents of (xii) of facts of the case. Applicant is put to the strict proof on 27th

December 2022, being aggrieved by the aforesaid Panchnama the Applicant raised his grievances and placed on record true and correct facts and circumstances which smacks of collusion and manifest arbitrariness in preparing the aforesaid Panchanama and shocking none of the Respondent authorities took cognizance of the grievance of the Applicant.

6.12. The Applicant is put to the strict proof with respect to contents of (xiii) of facts of the case. Applicant is put to the strict proof with respect to the contents that after continuing follow up with the authorities, the Applicant learnt that, 20th January 2023, the District Collector Mumbai Suburban District had forwarded the Applicant's complaint to Range Forest Officer (RFO) Mumbai Mangrove Cell, Western Mumbai Office, forest Department. and it is apposite to mention at this juncture that the allegation of the Applicant does not even pertain to Mangroves and thus the Mangrove Cell as such has no role to play.

6.13. The Applicant is put to the strict proof with respect to contents of (xiv) of facts of the case. Applicant is put to the strict proof with respect to the contents that on 30th May 2023, the RFO Mangrove Cell issued a letter to the Applicant thereby informing about a site visit schedule for 20th June 2023. I say that the allegations made in the Para against this Respondent are baseless.

6.14. The Applicant is put to the strict proof with respect to contents of (xv) of facts of the case. Applicant is put to the strict proof on 20th June 2023, the Applicant's representative was once again deliberately kept out of the said land for the purpose of joint inspection despite there

being a letter issued by the Forest Department for site inspection and nothing speaks more eloquently of the active collusion of the concerned officers colluding with Ferani/the Rahejas to shield and protect them in their illegal vandalizing of the environment.

6.15. The Applicant is put to the strict proof with respect to contents of (xvi) of facts of the case. Applicant is put to the strict proof with respect to the contents that on 1st August 2023, the Applicant raised an objection to District Collector Mumbai Suburban District that their office failed to appreciate that the Applicant's complaint is in respect of felling of tree on the said land which is situated on hilly area and is also approximately 5.5 kms away from any of the coastal line therefore it is unlikely that mangrove would thrive on such a hilly area.

6.16. The Applicant is put to the strict proof with respect to contents of (xvii) of facts of the case. The applicant is put to the strict proof with respect to the contents that aforesaid objection on 3rd August 2023, the joint inspection was carried out by RFO Mangrove Cell along with Ferani/Rahejas representative and the Applicant's representative to ascertain whether Mangroves exists or existed on the said land and whether mangroves were illegal cut. I do not admit the contents that the Panchanama smacks malafide and is prepared in a manner to support the Ferani/Raheja. A) the Applicant states that its grievance was never with respect to mangroves; B) only two representative of the Applicant were permitted to accompany at the time of inspection whereas 15-18 representative of Ferani/Raheja was permitted ; C) the authorities did not have necessary equipment to carry out site inspection including a video camera ; D) the Applicant's

representatives were not permitted to carry their phones or any other instrument to record the site.

6.17. The Applicant is put to the strict proof with respect to contents of (xviii) of facts of the case. The Applicant is put to the strict proof that on 18th October 2023, the Applicant once again wrote to the District Collector M.S.D. that the said land does not fall under the Mangrove area on the contrary the land falls under the hilly area. The Applicant is put to the strict proof with respect to Google images of the said land for the period from 2012 to 2023. I do not admit the contents that on a bare perusal of the same it evidently illustrates and explains how a gigantic flora has been destroyed to bare and bald piece of land over years by Ferani / Raheja.

6.18. The Applicant is put to the strict proof with respect to contents of (xix) of facts of the case. I do not admit the contents that in spite numerous complaints and follow up with various authorities no concrete action or conclusion has been derived from the said complaints. I do not admit the contents that the State Authorities have not taken adequate measures to ensure that such illegal tree-cutting is not carried, and no steps have been taken to protect the trees. I say that the Panchnama dated 13/12/2022 attached with the application as exhibit E is quite self explanatory. The said Panchnama was done after due site inspection and was duly signed by Panch wherein it is clearly mentioned that Panch have not found any tree cutting.

6.19. The Applicant is put to the strict proof with respect to contents of (xx) of facts of the case. Applicant is put to the strict proof with respect to the contents that Mumbai's greenery is unevenly distributed,

depending on how green areas are notified, they fall either under the jurisdiction of Maharashtra's Forest Department or the municipal corporation, much of the densest vegetation is concentrated in pockets like Sanjay Gandhi National Park, Aarey Colony (recognized in 2020 as a reserve forest)and managed through provisions of the Indian Forest Act, 1929. I say that the land under reference is private non forest land.

6.20. The Applicant is put to the strict proof with respect to contents of (xxi) of facts of the case. Plaintiff is put to the strict proof with respect to entire contents thereof. The applicant has made general remarks about Tree & Garden Department of Municipal Corporation in para no. (xxi) of the facts of the case and hence no remarks are required to be offered.

6.21. The Applicant is put to the strict proof with respect to contents of (xxii to xxvi) of facts of the case. Applicant is put to the strict proof with respect to (xxii) to (xxvi). I do not admit the contents that this Respondent has illegal activities on the said land; a. Illegal Tree Cutting; b. Illegal Deforestation; c. Illegal Hill Cutting; d. Illegal Construction; e. Change of the natural course of water bodies. I do not admit the contents of Study Report dtd.15/5/2024 produced by the Applicant. The report has not considered various aspects of the development. The report is not signed by the Authorised Representative. The report is not a scientific analysis as alleged by the Applicant. On the contrary, it is necessary to rely on the Panchanama dated 13/12/2022 attached to the application as Exhibit E, since the said Panchnama was done after due site inspection. It is clearly mentioned in said Panchnama that the Panch has not found any tree

cutting. This Respondent does not admit the contents that area approximately 52.8 HA destroyed which is further increased to 128.4 HA. I do not admit the contents that this Respondent systematically and illegally felling the trees and de-forestation is carried out. I do not admit the contents that this Respondent has caused eco-system and has damaged the environment. I do not admit the contents that this Respondent is systematically cutting the hill which is leading to soil erosion, landslides, destruction, and reduction in ground water.

6.22. The Applicant is put to the strict proof with respect to the contents of xxvii and xxviii. I do not admit the contents that Ferani / Rahejas have been systematically reducing the area as well as changing the natural course of water bodies on the land from the year 2000 till the survey there is reduction of about .25ha in the area of the water body. The rest of the contents of para (xxvii) are not admitted.

6.23. The grounds mentioned in the application (a) & (b) on page number 19 are not admitted to me. I do not admit the contents that of the Scientific Report upon which the Applicant is relying upon. The said report is not based on correct information, This Respondent does not admit and acknowledge the authenticity, correctness, legality and validity of the report as submitted at Exh. L-1. The report at Exhibit L-1 is based on surmises and gestures. This Respondent does not admit the contention that illegally 560 trees are chopped. The Applicant is relying upon the newspaper cutting which cannot fasten the liability on the Respondent.

6.24. I do not admit the contents that Respondent has done the act of illegal tree cutting, illegal deforestation, illegal hill cutting, illegal

construction and change in water body. I do not admit the contents that Panchnama is not fair and correct facts of illegal tree cuttings are not mentioned.

6.25. I do not admit the contents of Para (e) of the application.

6.26. The Applicant is put to the strict proof with respect to Ground (f), (g) and (h).

6.27. I do not admit the contents of Ground (i) to (q), (s) to (v), (w) to (z) of the application.

7. The application is not in limitation.

8. I say that the Applicant has initiated litigation before Hon'ble High Court Bombay wherein he could not obtain any relief and therefore the present application is filed in order to harass the Respondent. It is submitted that the Respondent has not damaged the environment in any manner. The Respondent has not cut the hill or chopped the trees. Whatever development is carried out is as per the sanctioned plans issued by the Planning Authority. and the Notification issued by the Environment Ministry. The application is filed with some ulterior motive to settle a civil dispute between the Applicant and the Respondent as no case is made out the application may be rejected.

9. This Respondent says that considering the various orders passed by the Hon'ble High Court Bombay in Suit (Original Side) bearing No.1628/2008 by the Hon'ble Single Judge and Division Bench and the sequence of filing proceeding before this Hon'ble Tribunal by Vanashakti and Nusli Wadia will show that the entire object of filing proceeding is nothing but to stop this Respondent from carrying out development

activities on the land which is subject matter of agreement between the Respondent and Nulsi Wadia who is Administrator of Estate of Late E.F. Dinshaw. Admittedly, development work has been started from 1997 and the Applicant cannot claim ignorance and in absence of any explanation or grounds made out the application filed by the Applicant before this Hon'ble Tribunal is barred by law of limitation. The Applicant even claims that this Tribunal shall read whatever is not stated in the report of the Committee appointed by this Hon'ble Tribunal. This Respondent says that the Applicant of this petition is making various statements against local body i.e. Mumbai Municipal Corporation, ESZ Committee and others without any base or facts on record.

10. The Applicant is aware of the fact that the Respondent is not doing any development activities without permission of concerned authority and concerned authorities are observing all the provisions of relevant laws, rules and Notification.

11. It is submitted that either on the point of construction of road or claiming that no development work of any kind can be allowed to carry out including putting road is neither legal nor proper. The Applicant is in habit of making various statements either are not relevant with the subject matter of the application or in the form repetition or referring to acts, omission of public authorities including authorities under Indian Forest Act. Thus the Respondent says that all the statements are devoid of merit and he did not damage the same.

12. Prima facie, the application mainly comprises of three issues, i.e., hill cutting, tree cutting and obstruction of nalla. However, the Committee after due site inspection found no specific violations as per the report. Having

not found anything, the Committee has surprisingly focused on incident which is six years old i.e. fire incident that happened in the year 2018 which has already been dealt with by the Forest Officer and Police Authorities. The Forest Department had already informed us vide their letter dtd. 19/01/2019 to adopt certain measures for prevention of fire in the future.

13. It is therefore prayed that application may be rejected.

What is stated in Paragraphs Nos. 2 to 3.3(a) to (d),7 are the legal submissions and paragraph Nos. 3(a)(i) to 5,8 to 12 are the information which I believe it to be true, Paragraph no. 6 is denial and I believe the same to be true.

Solemnly declared at Pune)

This 23rd September day of Sept., 2024) Respondent No. 7

Advocate for the Respondent No.7

NOTARY
SONAWANE MUKUND BHIKAJI
PUNE AREA
MAHARASHTRA
REG. NO. 1343/1998
EXPIRY DT. 30/11/2026
GOVERNMENT OF INDIA

BEFORE ME
M. B. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

OTED AND REGISTERED AT
ERIAL NUMBER 1315/24
23 SEP 2024

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

Annexure R1

27

FERANI HOTELS PRIVATE LIMITED

CONSTRUCTION HOUSE – B, 623, LINKING ROAD, 2ND FLOOR, OPP. KHAR TELEPHONE EXCHANGE, KHAR (WEST), MUMBAI – 400 052. TEL : 61313131 FAX : 91-22-26006946.

CIN No. : U55200MH1946PTC004954

Board Resolution No. 07/2024-2025

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF THE COMPANY HELD AT CONSTRUCTION HOUSE 'B', 5TH FLOOR, 623, LINKING ROAD, OPP. KHAR TELEPHONE EXCHANGE, KHAR WEST, MUMBAI – 400052, ON 16TH AUGUST, 2024.

"**WHEREAS** an Application bearing No. 166 of 2024 (WZ) (Nusli Neville Wadia V/s. The State of Maharashtra & Ors.) has been filed in the National Green Tribunal, Western Zone Bench, Pune, wherein the Company and its Directors viz. Mr. Sandeep G. Raheja (DIN 00138986) and Mr. Shyam N. Wadhwani (DIN 00053899) has been made parties as Respondent Nos. 7,8 and 9.

AND WHEREAS it will be necessary for the Company to be represented in the said proceedings.

IT IS NOW THEREFORE RESOLVED that the Company do appoint Mr. Dattratray Digamber Bhagwat and Mr. Sanjay Shenolikar as authorised representatives of the company to jointly and/or severally do various acts and deeds relating to Application bearing No. 166 of 2024 (WZ) (Nusli Neville Wadia. V/s. The State of Maharashtra & Ors.) before the National Green Tribunal (hereinafter referred to as "the said Tribunal"), Western Zone Bench, Pune, wherein the Company and its Directors viz. Mr. Sandeep G. Raheja (DIN 00138986) and Mr. Shyam N. Wadhwani (DIN 00053899) has been made parties as Respondent Nos. 7, 8 and 9 and to appear before the said Tribunal and/or any other Officer of the said Tribunal hearing the said Application and/or any matters arising therein or therefrom, and to represent the Company before the said Tribunal and/or any other Officer of the Tribunal and for that purpose to execute, sign and affirm Pleadings, Affidavits and all other Applications necessary for and in the said Application and/or matters therein or arising therefrom and to submit the same to the said Tribunal or the concerned Officers and to make and sign applications and to tender documents on behalf of the Company and generally to do and execute all acts, deeds, matters and things relating to the said Application and/or matters therein or arising therefrom."

FOR FERANI HOTELS PRIVATE LIMITED

(Sandeep G. Raheja – DIN 00138986)
Director

NOTARY
SUDHIR SHRAWAN SONAWANE
PUNE
REGD. NO. 10404
EXPIRY DT. 24/10/2028
GOVERNMENT OF INDIA

True to Py

TRUE COPY

SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

Annexure 335 R3

29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.817 OF 2010
IN
NOTICE OF MOTION NO.1863 OF 2008
IN
SUIT NO.1628 OF 2008

Ferani Hotels Private Limited ..Appellant.
versus
Nusli Neville Wadia and others ..Respondents.

WITH

APPEAL NO.806 OF 2010
IN
NOTICE OF MOTION NO.1863 OF 2008
IN
SUIT NO.1628 OF 2008

Nusli Neville Wadia ..Appellant.
versus
Ferani Hotels Private Limited and others ..Respondents..

.....

Mr. Abhishek Singhvi, Senior Advocate with Mr. Parag Tripathi, Senior Advocate, Mr. Zubin Behramkamdin, Mr. Vivek A. Vashi, Ms. Kanika Sharma, Mr. Abhimanyu Bhandari, Mr. Mike Desai, Mr. Kunal Bahri and Mr. Rook Ray i/b M/s. Bharucha & Partners for the Appellant in Appeal 817 of 2010 and for Respondent No.1 in Appeal 806 of 2010.

Mr. F.S. Nariman, Senior Advocate with Mr. N.H. Seervai, Senior Advocate, Mr. R.M. Kadam, Senior Advocate, Mr. V.R. Dhond, Senior Advocate, Mr. Rohan Kelkar, Mr. Shrikant Doijode and Ms. Falguni Thakkar i/b Doijode Associates for Respondent No.1 in Appeal 817 of 2010 and for the Appellant in Appeal 806 of 2010.

Mr. Vineet B. Naik i/b Mahimtura & Co. for Respondent No.3 in both the Appeals.

Ms. Kashmira Bharucha i/b Mr. K.D. Abhichandani for Respondents 5 and 6.

Mr. Simil Purohit with Mr. Rahul Totala and Mr. Hiren G. Shah i/b Prakash & Co. for Respondents 8,9,11,14,15, 17, 18, 23, 28, 29, 30, 34 to 37 and 49.

Mr. N.K. Mudnaney for Respondents 10,13, 19 to 24 and 31.

Mr. S.U. Kamdar, Senior Advocate with Mr. Rajesh Vaidya i/b A.R. Vaidya & Co. for Respondents 12, 16, 25, 26, 27, 38 to 48.

Mr. Ameya Malkan i/b Wadia Ghandy & Co. for Respondents 32 and 33.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

Annexure R2

28

PHOTOGRAPH OF MAJOR NALLA TRAINED AS PER MUNICIPAL APPROVAL ON PLOT BEARING C.T.S. NO.827A/4A/1 OF VILLAGE MALAD (E)

NOTARY
SUDHIR SHRAWAN SONAWANE
PUNE
REGD. NO. 10404
EXPIRY DT. 24/10/2028
GOVERNMENT OF INDIA

TRUE COPY
SUDHIR S. SONAWANE
NOTARY GOVT OF INDIA
PUNE

True Copy

336

CORAM : DR.D.Y.CHANDRACHUD, and
R.D.DHANUKA, JJ.

19 July 2012.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) :

These Appeals arise from a judgment dated 19 July 2010 of a Learned Single Judge on a Motion for interim relief in a suit. When an application for ad interim relief came up for hearing before the Learned Single Judge, an objection to the maintainability of the suit was raised on behalf of the First Defendant on the ground that the claim was barred by limitation. The Learned Single Judge was requested to raise a preliminary issue under Section 9A of the Code of Civil Procedure, 1908. The Learned Judge accepted the contention that an issue under Section 9A would have to be raised. The Court held that no case for the grant of ad interim relief, within the meaning of Section 9A(2) was made out on the ground of delay. However, the Learned Single Judge proceeded to dispose of the Motion for interim relief on the ground that since affidavits have been filed and parties were heard at length, it would not be appropriate or proper to have a hearing confined only to the disposal of the application for ad interim relief. Two appeals have been filed in these proceedings. The first appeal is by Mr. Nusli Neville Wadia, the Plaintiff; while the second appeal is by Ferani Hotels Private Limited, the First Defendant. The suit has been instituted by the Plaintiff in his capacity as the administrator of the estate of Late E.F. Dinshaw. For convenience of reference and since there are two appeals, it would be appropriate to refer to the parties as the administrator and Ferani. Reference to the other Defendants would be made appropriately, as and when necessary.

2. The suit has been instituted, inter alia, to seek a declaration that an

agreement entered into between the administrator and Ferani on 2 January 1995 stands vitiated by fraud and has been duly determined with effect from 12 May 2008. Consequential reliefs have also been claimed to the effect that the powers of attorney executed by the Plaintiff stand validly revoked and that certain agreements entered into between Ferani and the other Defendants, including among them agreements which date back to 2001, 2002, 2003, 2004 and 2005, have been validly revoked. An injunction has been sought, restraining Ferani from carrying out any further construction on the lands which form the subject matter of the suit and to demolish the constructions which have been put up. There is a claim for damages in the amount of Rs.1,370.06 Crores. The lands which form the subject matter of the dispute aggregate to about 350 acres and are situated principally in Malad.

3. On 2 January 1995 an agreement was entered into between the administrator (representing the estate of E.F. Dinshaw) and Ferani, under which Ferani undertook the development of the land and the sale of constructed areas thereon subject to certain terms and conditions. The agreement envisaged that Ferani would develop the land by constructing buildings thereon. The administrator was to grant, in favour of Ferani, a lease in respect of the land. Clause 8 of the agreement stipulated thus :

> "8. The Development Project contemplated by this Agreement, is the following :-
>
> (a) Sale, or transfer by any other format, by the Company to third parties (hereinafter referred to as "the Purchasers" or prospective purchasers or Unit holders / flat holders, as the case maybe) either on outright sale basis or on "ownership basis", or otherwise, the different building/s to be so put up by the Company on the respective segments

(being building/s belonging to the Company) and/or of the flats/ shops/ offices and/or other portions of and/or Units in such buildings/s, so that ultimately the building/s that would be so constructed by the Company would be conveyed and transferred by the Company in favour of the respective purchaser/s or a Co-operative Society or Limited Company or a Condominium (as may be decided upon by the Company) to be formed of such prospective purchasers or Unit holders/ Flat holders/co-operative society or limited company so that such purchaser / organisation would then become the owner of such building/s."

4. Under the agreement the administrator was to be paid 12% of "all gross realizations from the disposal/ transfer (by any and all formats) as aforesaid". The minimum share of the administrator was to be Rs.75 Crores, payable within a period of ten years from the date of the agreement. The development of the immovable property was to be in the control of the members of the Raheja family including a corporate body under its control. The agreement envisaged that the administrator would continue to be in juridical possession of the land. The administrator was to transfer title and handover formal and juridical possession of the land to the purchasers of the building constructed by Ferani. Clause 15 of the agreement stipulated that Ferani would be dealing with "outsiders/third parties on principal to principal basis" and the relationship between the parties would not be in the nature of a partnership and/or an association of persons. Clause 16(a) of the agreement provided that neither party shall be entitled to terminate or resile from the agreement or their obligations thereunder, the intention of the parties being that the agreement would be operative till the time that the entire development project was complete and a sale / transfer as contemplated had taken place. Ferani was required to furnish to the administrator a statement of accounts at monthly intervals in order to establish

that his 12% share was paid into a designated bank account simultaneously with the receipt by Ferani of its 88% share. An annual audit was to be carried out by C.C. Chokhsi & Co. Chartered Accountants, with a view to ensure that the administrator had received his 12% share in the designated bank account. Under clause 17(a) of the agreement the administrator was required to execute powers of attorney in favour of the Third and Fourth Defendants, who are representatives of Ferani, inter alia, authorizing them to get plans sanctioned, enter into agreements with flat purchasers and to arrange for the receipt and payment of the share of the administrator in the gross consideration.

5. Pursuant to the agreement the administrator executed powers of attorney on 2 January 1995. Parties entered into a supplemental agreement on 12 April 1995 providing a time frame for the realization of the minimum guaranteed share of Rs.75 Crores that was assured to the administrator. Between 1995 and 1999, no development work was carried out, as a result of which the minimum guaranteed amount was remitted to the administrator as provided in the agreement between the parties.

6. The record would indicate that disputes arose between the parties as early as in April 2000. On 4/11 April 2000, Ferani informed the administrator that from 21 March 2000 it had deposited in the designated bank account an aggregate sum of Rs.75.79 lakhs representing the 12% share of the administrator under clause 12(a) of the agreement, out of the gross receipts / realization in respect of 56 flats in a proposed building to be constructed by Ferani on the suit land. This building was alleged to have been sold by Ferani to

the Fifth Defendant, which according to the Plaintiff is a group company of the Raheja family. On 16 May 2000, a reply was addressed by the administrator to Ferani specifically drawing attention to the fact that clause 8(a) of the agreement contemplated a sale or transfer of flats to third parties. The administrator contended that the sales of the flats in question were not genuine sales and that consequently the obligation to deposit 12% of the sale values would not be taken as having been fulfilled. In the circumstances, Ferani was called upon to disclose "the ultimate genuine sale" made by the sister and associated companies of Ferani to third parties to whom the flats were allegedly sold at a notional value. The amount paid towards the share of the administrator, it was stated, would be treated as an on account payment to be finally adjusted against "genuine sales".

7. On 9 June 2000, Ferani addressed a communication to the administrator accepting that the Fifth Defendant was a "sister concern", but claimed that it had a separate entity and was a third party within the meaning of clause 8(a) of the agreement. According to Ferani the sale price which is reflected in the transaction (Rs.1,510/- per sq. ft.) was the rate at which the premises under sale were capable of realizing in the then market conditions. Nonetheless an offer was made by Ferani to the administrator that it would be willing to sell to the administrator or his nominees, within thirty days, 56 similar flats at the rate of Rs.1,510/- per sq. ft. on the same terms and conditions of sale as applicable to the Fifth Defendant. During the course of the development of the lands, nearly 19 meetings took place between the parties. The record would indicate that the administrator had a serious grievance that Ferani had entered into transactions for the sale of constructed premises to third parties who were alleged to be

companies forming part of the Raheja group. Whether there is prima facie merit in that allegation would be considered for the purposes of the present appeals. But, at this stage, it would be necessary to note that from time to time C.C. Chokshi and Company, who were nominated as auditors under the agreement, certified during the course of audit that Defendants 1 to 4 had stated that none of the flats or units had been sold to related parties or to sister or associated concerns of Ferani.

8. On 12 May 2008, the agreement was determined by notice on the ground that by purporting to sell the units in the completed buildings and in partially constructed buildings to their own nominees, Defendants 1 to 4 had acted fraudulently in breach of their fiduciary duty and of the express terms and conditions of the agreement. The administrator alleged that Defendants 1 to 4 had repudiated their obligation under the agreement. The suit was instituted on 13 May 2008.

9. On 30 May 2008 a Motion for interlocutory relief was taken out by the administrator. Between 22 July 2008 and February 2010 several letters were addressed by the administrator to various authorities, including the Sub-Registrar of Assurances and the Municipal Corporation, either to stop the registration of documents or the grant of building permissions. On 20 October 2009 and 23 December 2009, the Municipal Corporation stated that since there was no injunction or order of restraint of any Court, the request made by the administrator could not be acceded to. The Motion was moved before the Learned Single Judge for ad interim relief for the first time on 3 March 2010,

nearly 21 months after the suit was instituted. On behalf of Ferani an adjournment was sought to file an affidavit in reply. In the affidavit filed by Ferani to oppose the application for ad interim relief, an objection was raised to the maintainability of the suit on the ground that the claim was barred by limitation. The Learned Trial Judge was requested to frame a preliminary issue on the question of limitation under Section 9A of the Code of Civil Procedure, 1908. The Motion was listed before the Learned Single Judge on 16 June 2010 for ad interim relief.

10. By a judgment dated 19 July 2010 the Learned Single Judge held that :-

(i) No case for the grant of ad interim relief was made out having regard to the delay on the part of the Plaintiff, the administrator, in moving the Court;

(ii) A preliminary issue under Section 9A would have to be framed;

(iii) Since submissions have been heard at length following the filing of affidavits, the entirety of the Motion for interim relief would have to be disposed of.

Accordingly the Learned Single Judge issued a direction to the effect that Ferani shall not put any party, either a genuine third party or any related party including the other Defendants to the suit, in possession of any constructed premises except with the approval of the Plaintiff, pending the suit. The Learned Single Judge, however, excluded from the operation of the order Kotak Mahindra Bank Limited in the building constructed for them by Ferani under certain agreements dated 15 December 2006. The Motion was disposed of. The Learned Single

Judge had stayed the operation of the order for a period of two weeks. The order passed by the Learned Single Judge was stayed by a Division Bench of this Court on 26 July 2010.

11. Before we deal with the issues which arose before the Learned Trial Judge, prima facie, on the merits of the dispute it will be necessary for the Court to consider the ambit of the provisions of Section 9A of the Code of Civil Procedure, 1908. As we have noted, at the hearing of the application for ad interim relief, an objection was raised by the First Defendant to the maintainability of the suit on the ground that the claim was barred by limitation. While the Learned Single Judge has directed that a preliminary issue on the ground of limitation would have to be framed under Section 9A, the impugned order proceeds to dispose of completely the Motion for interim relief. Whether such a course of action is permissible in law would fall for determination in the first instance.

12. Section 9A was introduced in the Code by a Maharashtra Amendment[1]. Section 9A provides as follows :

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue –
>
> (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the

1 Act 65 of 1977 with effect from 19 December 1977.

hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

13. At the outset it will be necessary to note that insofar as this Court is concerned, it is common ground that the following two positions in law are settled :-

(i) Whether a plea of limitation as a bar to the Court entertaining the entire suit can be raised as an issue of jurisdiction under Section 9A is concluded by the following judgments :

(a) **Foreshore Co-operative Housing Society Limited v. Praveen Desai**[2];

(b) **Royal Palms (India) Pvt. Ltd. v. Bharat Shantilal Shah**[3];

(c) **Mukund Ltd. v. Mumbai International Airport**[4];

(d) **Jagshi Shah v. Shaan Builders**[5].

(ii) Whether Section 9A is inconsistent with the provisions of Order 14 Rule 2 and will therefore stand repealed by Section 16 of the Code of Civil Procedure Amendment Act 2002 is concluded by the following decisions :

(a) **Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. v. Jagruti**

2 2006(6) Bom CR 230 (Single Judge) and 2009(1) Bom CR 757 (DB).
3 (2009) 2 Bom CR 622 (DB).
4 2011(2) MLJ 936 (DB).
5 (2012) 3 Bom CR 770 (DB).

Industries[6]**;**

(b) **Foreshore Co-operative Housing Society Limited v. Praveen Desai**[7]**.**

14. The Court has been informed during the course of the submissions by learned Senior Counsel appearing on behalf of the administrator that the judgment of this Court in **Foreshore Co-operative Housing Society** was carried in appeal to the Supreme Court both on the point as to whether limitation can be raised as a jurisdictional issue under Section 9A and on whether Section 9A is inconsistent with Order 14 Rule 2. A Special Leave Petition has been admitted by the Supreme Court by an order dated 6 September 2011. The administrator has made a statement before this Court that on this issue, he wishes to canvas the correctness of the view on both these facets before the Supreme Court. Fairly, however, there is no dispute about the position in law that on both these aspects, the law stands concluded insofar as this Court is concerned.

15. The genesis of Section 9A originates in a decision of this Court in **Institute Indo-Portuguese v. Dr. T. Borges**[8] in which it was held by this Court that the Bombay City Civil Court was not required for the purposes of granting interim relief to enquire into the question of jurisdiction. The legislature intervened by amending the Code in 1977 on the ground that the practice of granting injunctions without going into the question of jurisdiction, even though raised had led to grave abuse. The object of the amendment was to provide

6 2008(5) Bom CR 284 (Aurangabad Bench).
7 2009(1) Bom CR 757 (DB).
8 (1958) 60 Bom L.R. 660.

that when a question of jurisdiction was raised at the hearing of an application for granting or setting aside an order granting interim relief, the Court shall determine that question first. In **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Private Limited**[9], the Supreme Court held that when an objection to jurisdiction of the Court is raised at the hearing of an application for the grant of or vacating interim relief "the Court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted". However, sub section (2) of Section 9A does not preclude the Court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. The judgment of the Supreme Court indicates, that merely because an objection to jurisdiction is raised, "the Court does not become helpless forthwith – nor does it become incompetent to grant the interim relief". At the same time the objection to jurisdiction has to be determined at the earliest possible moment. Following the decision of the Supreme Court in **Bagasarwalla**, several judgments of this Court have elucidated upon the ambit and scope of Section 9A. These include judgments of the Division Benches in :-

(i) **Meher Singh v. Deepak Sawhny**[10];

(ii) **Smithkline Beecham Consumer Healthcare BMBH v. Hindustan Lever Limited**[11];

(iii) **Foreshore Co-operative Housing Society Ltd. v. Praveen Desai**[12];

(iv) **Royal Palms (India) Pvt. Ltd. v. Bharat Shantilal Shah**[13];

(v) **Mukund Limited v. Mumbai International Airport**[14];

9 (1997) 3 SCC 443.
10 1999(1) Bom. C.R. 107
11 2003 Vol.105(2) Bom.L.R. 547.
12 2009(2) Mh. L.J.28.
13 2009(2) Bom.C.R. 622.
14 2011(2) Mh.L.J. 936.

(vi) **Associated Bombay Cinemas Private Limited v. Jamni S. Ramchandani[15].**

16. The principles which emerge from these decisions can be formulated thus:

(i) The provisions of Section 9A are mandatory. Where at the hearing of an application for granting or setting aside an order granting interim relief in a suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties, the Court shall proceed to determine at the hearing of the application the issue as to jurisdiction as a preliminary issue before granting or setting aside the order granting interim relief. Such an application cannot be adjourned to the hearing of the suit and must be disposed of expeditiously;

(ii) Though the application for the grant of interim relief or, as the case may be, for setting aside an order granting interim relief cannot be disposed of before a decision on the preliminary issue as to jurisdiction, the Court may nonetheless grant such interim reliefs as it may consider necessary pending the determination by it of the preliminary issue as to jurisdiction;

(iii) Once the issue of jurisdiction is required to be decided as a preliminary issue, notwithstanding anything contained in the Code, including Order 14 Rule 2, it has to be determined after adjudication which would require parties being given an opportunity to lead evidence. The decision by the Court of the preliminary issue is not merely a prima facie determination for the purposes of the application

15 2011 Vol. 113(2) Bom.L.R. 829.

for interim relief, but is a final determination of the issue of jurisdiction which the provision mandates must be heard and disposed of first as a preliminary issue. It is only upon the disposal of the preliminary issue of jurisdiction, that the Court can then take up the final disposal of the application for interim relief;

(iv) The first part of Section 9A refers to the stage at which the objection is taken, the stage being at the hearing of an application for granting or setting aside an order granting interim relief. The second part of the provision elucidates the nature of the objection, the objection being to the jurisdiction of the Court to entertain such a suit;

(v) Following the judgment of the Constitution Bench of the Supreme Court in **Pandurang D. Chougule v. Maruti H. Jadhav**[16], which held that it is well settled that a plea of limitation is a plea which concerns the jurisdiction of the Court which tries the proceedings and that a finding on the plea in favour of a party raising it would oust the jurisdiction of the Court, the Division Bench in **Foreshore Co-operative Housing Society Limited** (supra) held that the question of limitation would constitute a question of jurisdiction within the meaning of Section 9A. The decision in **Foreshore Co-operative Housing Society** has been followed by a Division Bench in **Royal Palms, Mukund** and **Associated Bombay Cinemas** (supra).

17. But, the submission which has been urged on behalf of the administrator by learned Senior Counsel is twofold. Firstly, it has been submitted that an objection, as to jurisdiction, of the nature that is contemplated by sub section (1)

16 AIR 1966 SC 153.

of Section 9A is an objection which must be capable of disposing of the entirety of the suit if it is upheld. In the present case, it has been submitted that several transactions between the parties which are sought to be rescinded have admittedly taken place within a period of three years of the date of the institution of the suit and those in any event would be within limitation. Consequently, it was submitted that even if the objection that has been raised by Ferani were to be upheld upon adjudication, that would result in only a part of the claim being held to be barred by limitation. The administrator does not concede at this stage that any part of the claim is barred by limitation. But, even if the submissions of Ferani were to be upheld, that would not result in the rejection of the suit in its entirety. Section 9A, it was urged, would not apply to this situation. Secondly, it is urged that sub section (1) of Section 9A does not oust the authority of the Court to consider atleast at the threshold whether the objection as to jurisdiction has some substance or justification. In other words, it was urged that an objection as to jurisdiction does not mandate that the Court must in every instance frame a preliminary issue and if such a construction were to be placed, it would be susceptible to grave abuse.

18. We would take up the second part of the submission in the first instance. The object and purpose of the legislature in introducing Section 9A was to obviate an abuse of process on the part of the Plaintiff. The statement of objects and reasons underlying the amendment makes it abundantly clear that the legislature had in mind a situation where a practice had grown in the City Civil Court of applications for interim relief being entertained while a hearing on an objection as to jurisdiction was postponed until that determination took place.

This practice finds support in a judgment of this Court in **Institute Indo-Portuguese** which had indicated that it was not necessary for the Trial Judge to postpone the hearing of an application for interlocutory relief until the question of jurisdiction was resolved. Evidently, the object of the State legislature in introducing the provisions of Section 9A was to ensure that when an objection on the ground of jurisdiction is raised, that must be addressed first before an application for interlocutory relief is finally disposed of. Nonetheless the legislature balanced the claim of a Plaintiff to have access to some interlocutory protection. Sub section (2) of Section 9A empowers the Trial Judge to grant interim protection until the question of jurisdiction is finally resolved. Though the object of the legislature was thus to protect against an abuse of process on the part of the Plaintiffs, experience of Trial Judges in this Court would be suggestive of the fact that in certain cases the provision can be capable of being abused by a Defendant. A Defendant may conceivably raise an objection as to jurisdiction merely with a view to delay the final disposal of a Motion for interim relief, cognizant of the fact that an ad interim application of the kind which is contemplated under sub section (2) of Section 9A may not in a given situation result in the grant of wide ranging interim reliefs of the kind that may be sought by a Plaintiff. We are not inclined to enter a finding that such is the case in the present case. For, as we would indicate prima facie, the objection as to jurisdiction here cannot by any means be regarded as being frivolous or lacking in bonafides. But, the possibility of an abuse by the Defendants, which the practical unfolding of the provision of Section 9A indicates, in the experience of the Trial Judges of this Court, would emphasize the necessity of allowing a modicum of discretion on the part of the Trial Judge while dealing with an

application for the raising of a preliminary issue under Section 9A. The judgment of the Supreme Court in **Bagasarwalla's** case provides some element of guidance when the Supreme Court notes that the Trial Judge is not helpless merely because a preliminary issue is sought to be raised under Section 9A. We are of the view that in order to ensure that Section 9A is not susceptible to grave abuse at the behest of an unscrupulous Defendant, it would be within the jurisdiction and authority of the Trial Judge to consider as to whether the objection as to jurisdiction arises bonafide or whether it is wholly frivolous. Undoubtedly, this would contemplate only a minimal enquiry by the Court, since if at that stage a comprehensive adjudication were to be contemplated, that would virtually defeat the provisions of Section 9A. The provisions of Section 9A therefore would not be inconsistent with the Trial Judge exercising a minimal enquiry at the very threshold to satisfy the conscience of the Court that the objection of jurisdiction has been raised bonafide and is not a frivolous or irrelevant exercise meant only to delay or defeat the process of the Court.

19. On the first leg of the submission it has been urged before the Court by learned Senior Counsel that Section 9A uses the expression "to entertain such a suit". Based on this, it was submitted that an objection to the jurisdiction of the Court must be to the entertainment of a suit in its entirety. In other words, the submission is that where an objection as to jurisdiction could not result in the complete disposal of the suit, in the event that it is upheld, the issue as to jurisdiction need not be framed as a preliminary issue.

20. At the outset, when we consider the submission it would be necessary to

note that a restriction of the kind that is suggested on behalf of the administrator is not contained in the plain terms of Section 9A. The first part of Section 9A(1) makes a reference to the stage at which the objection is raised while the second part adverts to the nature of the objection. The nature of the objection is that it has to be "an objection to the jurisdiction of the Court to entertain such a suit". An objection to jurisdiction may in a certain conceivable situation be to the jurisdiction of the Court to entertain the suit in its entirety as for instance, where the Court lacks the jurisdiction to entertain the subject matter of the suit on the ground that properly construed the suit relates to the relationship of a lessor and lessee falling within the exclusive domain of the Small Causes Court in the city of Mumbai. Alternately, the objection may be to the lack of territorial jurisdiction or on the ground of a lack of pecuniary jurisdiction. Equally an objection as to jurisdiction can well be in respect of a part of the cause of action which is set up in the suit. For instance, even on the issue of territorial jurisdiction, a part of the cause of action may fall within the jurisdiction of the Court, while another part may fall outside. An illustration of that nature is to be found in the judgment of the Supreme Court in **Sandeep Polymers (P) Ltd. v Bajaj Auto Ltd.**[17]. The significant aspect is that if an objection to the jurisdiction of the Court to entertain a part of the cause of action which is set up in the suit is raised and sustained, that part of the cause of action would fall outside the scope of adjudication in the suit before the Court before which the objection is raised. The object of the legislature was to preclude the Plaintiff from pursuing an application for interlocutory relief though the claim on the basis of which the application is founded falls outside jurisdiction. This rationale would be relevant both to a situation where the entirety of the claim lies outside the jurisdiction of the Court

17 (2007) 7 SCC 148.

as well as in a situation where a part of the cause of action is outside the jurisdiction, though the rest falls within. An objection as to the jurisdiction of the Court "to entertain such a suit" must bear its natural and ordinary connotation which would mean an objection to the jurisdiction of a Court to entertain even a part of the cause of action raised in a suit. For this Court to hold that Section 9A would not apply in a situation where the objection of jurisdiction would not result in the disposal of the entire suit, even if it were to be upheld would be to introduce a condition which has not been imposed by the legislature. In the course of interpreting Section 9A, it would not be open to this Court either to rewrite the provision or to introduce a condition which the legislature has not found it fit to impose. If as a result of the experience which has been gained over the years on the practical working of the statutory provision, an amendment to the provision is necessitated, the remedy would not lie before this Court, but before the legislature which must consider a possible amendment.

21. In the view which we have taken, we would have to determine as to whether consistent with the minimal enquiry that we have contemplated, the Learned Single Judge was justified in directing that the issue of limitation should be raised as a preliminary issue consistent with the provisions of Section 9A. The objection as to jurisdiction has been raised in the affidavit filed on behalf of the First Defendant on 12 March 2010. Paragraph 4 of the affidavit contains a specific submission that the suit is barred by limitation and that this issue should be raised and decided as a preliminary issue under Section 9A. In paragraphs 10.1 to 10.8 and in paragraph 11 the First Defendant has set up the basis on which the plea of limitation has been raised. According to the First Defendant on

11 April 2000 the administrator was informed that 56 flats in Building No.4 had been sold and the Plaintiffs' share of 12% had been banked in the designated bank account. On 16 May 2000, the administrator raised an objection on the ground that the Fifth Defendant to whom the sale was made was not a third party and was an associated company. In response, the First Defendant by its reply dated 9 June 2000 stated that though the Fifth Defendant was a sister concern, it was a separate legal entity and therefore a third party within the meaning of clause 8(a). In addition, the First Defendant offered to sell an equal number of flats to the Plaintiff at the same rate and on the same terms and conditions. Subsequently, on 5 April 2002, the administrator was informed of the sale by the First Defendant to the Sixth Defendant, another sister concern of three units in Building M on C.T.S. 1406A/3/8. On 23 April 2002, the Plaintiff raised an objection to the sale on the ground that this was not a genuine sale to a third party. By a communication dated 2 May 2002 the First Defendant informed the Plaintiff that the sale was a genuine sale in respect of which Form 37-I had been filed with the Income Tax Department. The contention of the First Defendant is that between 2000-2002 the Plaintiff was aware of the position of the First Defendant that although the Fifth and Sixth Defendants were associated companies, being independent legal entities, they were a third party within the meaning of the agreement. According to the First Defendant the sales made to Defendants 8 to 49 were third party sales and the claim was barred by limitation. As regards the negotiation letters which were sought to be revoked as part of the reliefs claimed in the suit, it has been submitted that those letters date between 30 March 2001 and 4 April 2005, besides which there were other agreements between April 2005 and March 2006. In our view, having due regard to the

nature and basis of the objection, it cannot be asserted that the claim as to limitation is frivolous or that it was lacking in bonafides.

22. The Learned Single Judge was in these circumstances justified and as a matter of fact Section 9A(1) obligated the Court to raise an issue of jurisdiction to be tried as a preliminary issue. Having decided to raise the issue of limitation as a preliminary issue, the Learned Single Judge was of the view that no case for the grant of ad interim relief was made out. The basis of this determination is contained in paragraphs 71 and 72 of the impugned order. The Learned Single Judge has noted that the administrator had atleast suspected some fraud, if any, committed by Ferani by appointing its nominees or related companies, since May 2000. A grievance was again made in April 2002. According to the Learned Single Judge, the Plaint itself shows that the entire fraud was brought to light in May 2005. Though the administrator sued in May 2008, no application for the grant of ad interim relief was made until February 2010. For these reasons, the Learned Judge held that it would be impossible to grant ad interim relief to the Plaintiff after the lapse of the years that have passed. But the Learned Single Judge proceeded to dispose of the Motion for interim relief on the ground that after detailed arguments were addressed and the material on the record had been considered, it would be an abuse of the process of the Court to allow parties to argue only an application for ad interim relief. It was on this basis that the Learned Judge proceeded to dispose of the Motion in its entirety. We find considerable merit in the submission that the impugned order of the Learned Single Judge insofar as it disposes of the application for interim relief finally is unsustainable. Once the Motion for interim relief stands disposed of, the issue

which the Learned Single Judge has framed would cease to be a preliminary issue because then it would partake of the character of an issue which would fall for determination under Order 14 Rules 1 and 2. What the legislature has contemplated is that an issue of jurisdiction has to be disposed of first before the interlocutory application can be disposed of finally. Disposing of the Motion finally without the issue of jurisdiction being resolved, would clearly be in the teeth of the provisions of Section 9A(1). Section 9A(1) clearly mandates that the issue of jurisdiction cannot be relegated to the stage of the hearing of the suit. Moreover, that issue has to be decided before the application for interlocutory relief can be finally disposed of. In these circumstances, we are of the view that the order of the Learned Single Judge disposing of the Motion finally is unsustainable and would to that extent has to be set aside. Consistent with the provisions of Section 9A(1) which require the raising of the issue of jurisdiction as a preliminary issue, the Learned Single Judge would have been within jurisdiction in entertaining an application for ad interim relief within the meaning of sub section (2) of Section 9A. The hearing of the Motion for interim relief would have to be taken up after the determination of the preliminary issue under Section 9A.

23. That leads the Court to the issue as to whether the grant of any ad interim relief is warranted. As we have noted earlier, the final relief that the Learned Single Judge has granted is not an ad interim order within the meaning of Section 9A(2), but a final order on the Notice of Motion. The Learned Single Judge was of the view that no case for the grant of ad interim relief was made out. That is the matter which now falls for the determination of the Court.

24. The substratum of the case of the Plaintiff is on the allegation of fraud. The allegation of fraud can for the purposes of elucidation be broadly distributed into four heads as pleaded in the plaint:-

(i) Defendants 1 to 4 have transacted with themselves through the device of front / nominee companies. This allegation of fraud involves Defendants 8 to 13, 16-17, 19-30 and 32-49. According to the Plaintiff for each of the financial years in which minimum guaranteed amounts were to be paid, a cluster of companies was incorporated at the behest of Ferani / the Rahejas just prior to the dates of the transactions in question. Most of the companies, it was alleged, had common directors, auditors, addresses or witnesses to their Memoranda and Articles of Association. The companies had almost identical paid up capitals of Rs.1 lac or Rs.1.5 lacs in most cases. Despite the limited capital and recent incorporation, the companies were projected as having entered into transactions with Ferani involving several crores of rupees. All the transactions were allegedly in the form of negotiation letters which provided for similar terms of payment including rates. The initial amounts which the companies paid were alleged to be financed by unsecured loans principally from the Seventh Defendant which is stated to be a partnership firm of the Raheja family. According to the Plaintiff, the fact that Defendants 8 to 49 were actually related or that they were nominees of the First Defendant or the Rahejas was a fact which was not disclosed to the auditors, C.C. Chokshi & Co. appointed under clause 16(g) of the

development agreement. The auditors, as the administrator points out, were informed by Ferani that none of the sales to Defendants 8 to 49 were sales to related persons or nominees of Ferani.;

(ii) The second allegation of fraud involves two negotiation letters with front / nominee companies viz. Defendants 14 and 15. According to the Plaintiff in pursuance of these negotiation letters, Ferani purported to sell identified areas to its front companies at a stated price. These negotiation letters contain an apparently innocuous clause stating that in the event that there was an increase or decrease in the areas, the consideration would be proportionately adjusted. The administrator was paid his share of consideration stated in the initial letters of negotiation of 2002. Subsequently, when the copies of the negotiation letters of May 2005 were forwarded to the administrator, he realized that although the area was much higher, the rate was the same. The allegation is that by adopting this modus operandi, the administrator was deprived of his share of 12% of the genuine consideration.

(iii) The third allegation of fraud is that the First Defendant entered into leave and licence agreements with Defendant No.31 dated 21 November 2003 in respect of areas yet to be transacted under which it would take a substantial deposit and licence fee from the licensee. The leave and licence agreement was disclosed to the administrator only under a letter dated 5 April 2005 and 12% of the deposit amount or of the licence fee was not shared with him at all. Thereafter, according to the administrator, the areas with the licensee were transacted with Defendant No.31 which is an associated concern of

the Raheja group and the deposit was transferred to it. The administrator objected to this transaction on 2 June 2005;

(iv) The fourth allegation is that a transaction was entered into on 15 December 2007 by Ferani with the Kotak group, involving two separate agreements, one of which was disclosed and the other was concealed. According to the Plaintiff, the actual purchase consideration was split into two agreements, one for the building and the second for amenities such as aluminum cladding. Both the agreements were entered into on the same day and the consideration was split up approximately in the ratio of 85 : 15. The administrator was paid his share only under the first agreement. On obtaining knowledge of the transaction, the administrator wrote to Kotak on 24 February 2008. It was only after the filing of the suit, since the no objection of the administrator was required for the handing over of possession of Building 21 to Kotak, that Kotak paid up and permission was granted. Moreover, it has been submitted that in certain instances, the premises which form the subject matter of certain transactions were never in fact constructed.

25. On behalf of Ferani, it was sought to be urged by learned Senior Counsel that :-

(i) Clause 8(a) of the agreement does not prohibit a sale to a sister concern; and

(ii) So long as the party with whom a transaction was entered into was not a party to the contract, the sale would be to a third party within the meaning

of clause 8(a) of the agreement.

Learned Senior Counsel submitted that Ferani has made full disclosures of all transactions and in the absence of any misrepresentation, the allegation of fraud is misconceived. It has been urged that the essence of the development agreement, especially under clause 8(a), was that the administrator would receive 12% of the gross consideration on all sales. It has been submitted that the purchaser to whom the sale has been made is irrelevant, so long as it is made to a "third party" who is not a signatory to the development agreement. Learned Counsel urged that the test is not the identity of the third party, but the genuineness of consideration. It has been urged that the plaintiff has not produced any material to support the allegation regarding inadequacy of consideration. It is urged that the Single Judge rightly held that the issues in dispute would be a matter of accounts. It has been urged that monthly intimation letters were addressed to the plaintiff, in relation to all transactions, between 2000 and 2006 and no objections were forthcoming, on the consideration for the transactions. The fact that the auditors, who were nominees of the administrator did not dispute the accounts rendered with relation to the transactions dispels any allegation of fraud. Learned Senior Counsel submitted that, barring one case, no member of the Raheja family is a director / shareholder / investor in any of the companies. It has been further submitted that out of the 44 transactions that have been challenged, 34 are barred by limitation. It has also been urged that of the 10 transactions that are not allegedly barred by limitation, several are with companies which involve independent third party investors, and that no member of the Raheja family is a

director or shareholder in any of the buyer companies in these transactions. Further, in 8 or 9 transactions, the third party concerned, involved a relative of the spouse of a daughter of the Raheja family in the capacity as director / shareholder / investor, none of which could be said to be a party related to Ferani.

26. Clause 8(a) of the agreement provides that the development project contemplated by the agreement would involve the sale or transfer by any other format by Ferani to third parties either on an outright sale basis or ownership basis or otherwise, of the buildings which were to be constructed by Ferani. When the parties referred to third parties in clause 8(a), there was a business understanding which was reflected in the words of the document. The duty of the Court while interpreting a commercial document must be to give a business meaning to the words used. When parties referred to transfers to third parties, evidently they had an intent that the transactions would be arms length transactions. Evidently, the consideration that was payable to the administrator representing 12% of the gross consideration would depend upon the transactions which Ferani entered into with these third parties. The basis of the expression 'third parties' in clause 8(a) must therefore be understood as conveying an intent of the parties to the effect that these transactions would be transactions with genuine purchasers. For it was on the foundation of a genuine transaction that the consideration representing 12% of the share of the administrator would have to be worked out. Even if learned Senior Counsel appearing on behalf of Ferani is held to be justified in submitting that the agreement does not expressly prohibit a transaction with a party other than a

signatory to the contract, nonetheless there can be no gainsaying fact that the assurance that was meted out to the administrator was that he would be entitled to a certain share of the total consideration. The share of the administrator could be worked out on the basis of a bonafide sale in favour of a third party. Therefore, prima facie we are not inclined to accept the construction which has been sought to be placed on behalf of Ferani on clause 8(a) of the agreement. Undoubtedly, clause 15 of the agreement only contains a statement to the effect that while the administrator and Ferani would be dealing with outsiders / third parties, they would not be construed as having entered into a partnership or an association of persons.

27. In construing the manner in which parties understood clause 8(a), regard must be had to the contemporaneous conduct. On 5 April 2002 Ferani informed the administrator of the receipt of an amount of Rs.1.85 Crores for the sale on partnership basis of units in Building M. The sale was in favour of the Sixth Defendant, Palm Grove Beach Hotels Pvt. Ltd, which was stated to be a group company. On 23 April 2002, in a letter addressed on behalf of the administrator to Ferani, it was contended that Palm Grove Beach Hotels Pvt. Limited was not a third party within the meaning of clause 8(a) of the agreement and that the sale was not a genuine sale. In response Ferani by its letter dated 2 May 2002 stated thus :

> "For all practical purposes the sale to Palm Grove Beach Hotels Pvt. Ltd. has to be treated as the sale to a "third party" as the sale has been done to Palm Grove Beach Hotels Pvt. Ltd. for its business purposes. In the circumstances aforesaid the above sale has to be treated as a "genuine sale" and you cannot treat it as "on account payment" to be finally adjusted against the genuine sale effected by Palm Grove Beach Hotels

Pvt. Ltd. Hence this is genuine sale and the payment of 12% of the sale contribution by them to you must be taken as fulfillment of our obligation."

28. Ferani therefore clearly sought to justify the sale to the Sixth Defendant as a genuine sale. Evidently therefore it was within the contemplation of parties that a sale in favour of a third party within the meaning of clause 8(a) must be a genuine sale. Moreover, the auditors, C.C.Chokshi & Co. certified on nearly 11 occasions, that they were informed by Defendants 1 to 4 that none of the sales or transactions involved related or associated companies. If the submission which has now been sought to be urged reflected the understanding of Ferani at the relevant time, they would have only informed the auditors that the issue as to whether the sales were to a related or associated company was irrelevant because in their construction, a third party would mean an entity which was not a party to the contract. Evidently that was not the understanding of either of the parties at the relevant point in time.

29. The basis and foundation of the claim which has been made by the administrator is that the transactions which were put into place by Ferani were motivated by the object of diluting the consideration of 12% that was liable to be paid under the terms of the agreement. During the course of the hearing, we enquired with Learned Senior Counsel appearing for the administrator as to whether there is any material on the record that would indicate that the sales to Defendants 8 to 49 were not reflective of the true market value that prevailed at the relevant point in time. At this stage, it may be noted that there is no material on the record on the basis of which the Court can conclude prima facie that the sales in favour of Defendants 8 to 49 did not reflect the true or correct market

value. Whether the sales at the material time did or did not accord with the prevailing market value for the properties which were put up for sale is essentially a matter of evidence and cannot be decided a priori on the basis of affidavits. During the course of the submissions, learned Senior Counsel appearing on behalf of Ferani has placed on the record charts, reflective of the position as it stood during the period when the provisions of Section 37-I of the Income tax Act 1961 were in operation and subsequent thereto when those provisions ceased to apply. On the basis of those charts, it has been sought to be urged that the transactions which have been challenged by the administrator are in several cases at rates which are much higher than those transactions which have been accepted by the administrator. In response, the submission which has been urged on behalf of the administrator is that the transactions which have been accepted by him were transactions with genuine third parties which he had no locus to question under the terms of the agreement. In rejoinder and towards conclusion of the submissions, a computation has been tendered on behalf of the administrator to the Court on the basis of the rates as contained in the ready reckoner with a view to urge that the rates at which Ferani transacted were lower than the rates which were prevailing in the ready reckoner. We find merit in the submission which has been urged on behalf of Ferani that it would be inappropriate for this Court, sitting in appeal to allow such material to be adduced for the first time, absent such a submission being urged before the Learned Single Judge and particularly in the absence of either pleadings or underlying material to document the submission. This is evidently a matter which must be deferred to a closer consideration, when the hearing of the application for interim relief in the Notice of Motion can be taken up.

30. In pursuance of the agreement that was entered into between the parties on 2 January 1995, development has proceeded. During the course of the hearing, it has emerged before the Court that there have been nearly 1600 transactions comprising both of residential and commercial properties of which 144 are commercial transactions. The administrator has challenged 44 of the commercial transactions. The Court has been informed that there is no dispute in regard to the rates at which the transactions relating to the residential properties have taken place. On behalf of Ferani, it has been submitted that out of the 44 transactions pertaining to commercial properties that have been challenged by the administrator, 41 involved registered sale deeds, where possession has already been handed over to third parties. 34 out of the 44 transactions, it has been urged, have taken place beyond a period of three years prior to the institution of the suit and would be barred by limitation.

31. One glaring factor which must weigh with the Court in the present case is the element of delay on the part of the administrator in moving the Court. The delay on the part of the administrator must be considered from the perspective of two periods : (i) the period between the date of the disputes that arose under the agreement and the date of the suit; and (ii) the period between the date of the institution of the suit and the first application for the grant of ad interim relief. The material on the record would indicate that right from April 2000, the administrator was aware of the transactions between Ferani and entities which the administrator alleged were related or associated companies The record would show that as far back as on 16 May 2000 the administrator had

questioned the transaction between Ferani and the Fifth Defendant on the ground that it was not a genuine sale. Ferani had on 9 June 2000 stated that the sale consideration accorded with the prevailing market prices at the time and offered to sell to the administrator an equivalent number of 56 flats on the same terms and conditions. Between 10 and 23 April 2001, the administrator had requested Ferani to send copies of agreements entered into pursuant to the transactions with Defendants 8 to 13, which agreements (negotiation letters) Ferani then submitted. On 23 April 2002 the administrator objected to a transaction entered into with the Sixth Defendant on the ground that being a group company the transaction was not with a genuine third party. On 2 May 2002 Ferani informed the administrator that for all practical purposes, the sale in favour of the Sixth Defendant had to be treated as a sale to a third party and was a genuine sale. On 2 June 2005, the administrator objected to the transaction that had taken place with Defendant No.31. On 2 April 2005, an MoU was entered into between Ferani and the Fifth and Sixth Defendants for the purchase of certain non-residential units of which copies were forwarded on 5 April 2005. On 5 April 2005 Ferani addressed communications to the administrator intimating the receipt of sums under letters of negotiation. Admittedly, several meetings took place between the parties on and after May 2005 when the administrator objected to the transactions. On 2 November 2005 the administrator in a communication suggested that after a notice of seven days, he shall be free to revoke the power of attorney provided to Ferani on account of its abuse. A meeting took place on 16 November 2005 between the representatives of the parties where it was agreed that a chart furnishing identities of the purchasers of the units / buildings and a break up of the

transactions by category would be furnished. According to the administrator, the chart was furnished on 17 November 2005.

32. We have adverted to some of these events because they would suggest prima facie, though in fairly unmistakable terms, that parties were in dispute over the transactions which Ferani entered into right since April 2000. The record before the Court would, prima facie, indicate that from time to time the administrator raised objections to those transactions and was confronted with the defence by Ferani that the transactions accorded with the prevailing market price and were genuine transactions. In this background, the fact that the administrator chose to file the suit only in May 2008 assumes significance. Equities have intervened in the meantime. It has been stated before the Court on behalf of Ferani that in the interregnum steps have been taken for the removal of encroachment and for carrying out the work of development. Third party rights have intervened. Even after the suit was instituted on 13 May 2008, an application for ad interim relief was moved before the Learned Single Judge only on 3 March 2010. The only explanation which the administrator had for the delay in moving an application for ad interim relief is that the Sub Registrar and the Municipal Corporation had been moved not to register documents or, as the case may be, to grant building permission and it was only in October / December 2009 that the Municipal Corporation informed him that absent any injunction, it would proceed with permissions. Admittedly, in the meantime, the work under the project was continuing. These are circumstances which must weigh with the Court in declining to grant a stay on construction at the ad interim stage. The order which the Learned Single Judge passed precludes the sale of any unit

whatsoever without the consent of the parties. Parties are in dispute and an order of the Court restricting the sale of constructed premises only with the consent of the parties would virtually bring the entirety of the project to a stand still. The entitlement of the administrator under the agreement dated 2 January 1995 is to the receipt of a share in the gross total consideration equivalent to 12%. The grant of injunctive relief restraining Ferani from selling its units would therefore neither be in accordance with the equities of the situation nor the mutual rights and obligations of the parties.

33. During the course of the hearing the Court has been informed by learned Senior Counsel appearing on behalf of Ferani that the following payments have been made or, as the case may be, deposited in pursuance of the agreement dated 2 January 1995 :

(i) Between 5 April 1996 and 9 January 2008 : Rs.144 Crores deposited in a designated account;

(ii) Between 9 January 2008 and May 2008 : Rs.14.54 Crores paid directly;

(iii) Between 14 May 2008 and 2 July 2009 : Rs.7.92 Crores deposited in the designated account;

(iv) Between 6 July 2009 till date : Rs.57 Crores deposited in an account maintained in the Indian Bank.

34. Accordingly an amount of Rs.223 Crores has been deposited or, as the case may be, paid directly. We are of the view that the ends of justice would be met if, pending the hearing and final disposal of the preliminary issue under

Section 9A, Ferani is directed to maintain accounts of all transactions falling within the purview of the agreement dated 2 January 1995 and in addition, is directed to continue to deposit an amount representing 12% of the share of the administrator out of the gross total consideration without prejudice to the rights and contentions of the parties.

35. Accordingly, the Appeals shall stand disposed of in terms of the following directions :

(i) Appeal 817 of 2010 filed by Ferani Hotels Private Limited shall stand allowed and the impugned order of the Learned Single Judge dated 19 July 2010 shall stand set aside;

(ii) The following issue is raised under Section 9A of the Code of Civil Procedure, 1908 and shall be tried as a preliminary issue :

"Whether the claim of the Plaintiff in the suit is barred by limitation."

(iii) The Plaintiff shall file an affidavit in lieu of the examination-in-chief within a period of four weeks from today. Shri Justice D.G. Karnik, Former Judge of this Court is appointed as Commissioner for recording evidence. The fees payable to the Commissioner shall initially be shared in equal proportion by both the parties;

(iv) Pending the hearing and final disposal of the preliminary issue, Ferani Hotels Private Limited is directed to maintain accounts and to continue depositing an amount equivalent to 12% of the gross sale consideration in a designated bank account. The amount upon deposit shall be invested in a fixed deposit to abide by further orders of the Learned Trial Judge;

(v) Parties shall endeavour an expeditious completion of the recording of evidence before the Commissioner, preferably within a period of three months from today;

(vi) The Learned Single Judge is requested to endeavour an expeditious disposal of the preliminary issue preferably within a period of three months after the receipt of the report of the Commissioner appointed for recording evidence;

(vii) Liberty is reserved to the Plaintiff to apply before the Learned Single Judge for appropriate interim reliefs after the final decision on the preliminary issue;

(viii) Appeal 806 of 2010 filed by Mr. Nusli Wadia shall stand disposed of in the aforesaid terms;

(ix) We clarify that all the observations contained in this judgment are confined to the issues which have arisen before this Court at the present stage and the view expressed by the Court on the merits of the rival contentions shall not come in the way of the disposal of the Notice of Motion or the suit in terms of the directions issued.

(Dr. D.Y. Chandrachud, J.)

(R.D.Dhanuka, J.)

NOTARY
SUDHIR
SHRAWAN
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PUNE
REGD. NO. 10404
EXPIRY DT.
24/10/2028
GOVERNMENT OF INDIA

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SUDHIR S. SONAWANE
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Annexure R-4

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C.A. 3396/15

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7732 of 2011

Foreshore Co-operative Housing Society Limited

..Appellant(s)

versus

Praveen D.Desai (Dead) thr. Lrs. and others

..Respondent(s)

with

Civil Appeal No. 5514 of 2012

Razia Amirali Shroff and others .....Appellant(s)

versus

M/s Nishuvi Corporation and others .....Respondent(s)

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD.NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

Civil Appeal No. 5515 of 2012

Razia Amirali Shroff and others .....Appellant(s)

versus

M/s Nishuvi Corporation and others .....Respondent(s)

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Civil Appeal No(s). 3396 of 2015
(Arising out of SLP(C) No.24880 of 2012)

Nusli Neville Wadia .....Appellant(s)

versus

Ferani Hotels (Pvt.) Ltd. and others
..Respondent(s)

Civil Appeal No(s).3397 of 2015
(Arising out of SLP (C) No.2989 of 2012)

Punam Co-operative Housing Society
.....Appellant(s)

versus

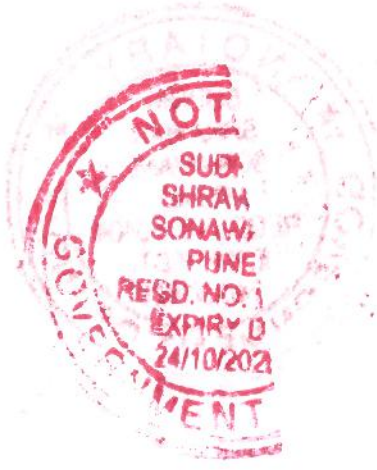
Pratap Issardas Bhatia and others
..Respondent(s)

Civil Appeal No(s).3393-95 of 2015
(Arising out of SLP (C) Nos.16373-16375 of 2013)

Rama Vijay Kumar Oberoi thr. GPH ...Appellant(s)

versus

Sunita Sudam Ranaware etc.
..Respondent(s)



JUDGMENT

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M. Y. EQBAL, J.

Leave granted.

2. In these appeals question has been raised about the ambit and scope of Section 9A CPC as inserted by the Code of Civil Procedure (Maharashtra Amendment) Act 1977 vis-à-vis the provision of Order XIV Rule 2 of the Code of Civil Procedure. Before adverting to the legal question, it would be proper to mention the nature of the orders passed by the Bombay High Court in these appeals.

3. In Civil Appeal No. 7732 of 2011 (Foreshore Co-operative Housing Society Limited vs. Praveen D. Desai (Dead) thr. Lrs. and others) the Division Bench of the Bombay High Court upheld the order of the learned Single Judge dismissing the appellant's suit on the ground that the suit was barred by limitation. In Civil Appeal No.5514 of

2012, the appellants are aggrieved by the impugned Order dated 15.3.2012, whereby the Division Bench refused to interfere with order dated 24.1.2011 passed by the learned Single Judge in Notice of Motion No.3616 of 2010 in Suit No.2901 of 2010. The Notice of Motion was taken out by the plaintiffs seeking certain interim reliefs pending hearing of the suit. The learned Single Judge by the said order directed the defendants to file reply to the Notice of Motion and also directed that the Notice of Motion itself be placed for final hearing. Grievance of the plaintiffs before the Division Bench was that the learned Single Judge has declined to pass any ad-interim order in favour of the plaintiffs-appellants without giving any reason for doing so. The Division Bench noticed that the defendant-respondents had raised objection to the maintainability of the suit itself as also on the question whether the suit is filed within the period of limitation. In Civil Appeal No.5515 of 2012, the appellants are aggrieved by the order passed by the learned Single Judge whereby the prayer for grant of ad-interim relief

was declined pending hearing on the preliminary issue raised by the defendants under Section 9A, CPC, till the jurisdiction of the court to entertain the suit is decided. The Division Bench in the matter of Nusli Neville Wadia (Civil Appeal arising out of SLP(C) No.24880/2012) set aside the judgment of the learned Single Judge and directed inter alia that the issue "*Whether the claim of the Plaintiff in the suit is barred by limitation*" be raised under Section 9A and tried as a preliminary issue. Whereas while dealing with the appeal against the order of learned Single Judge framing a preliminary issue under Section 9A with regard to limitation and decided to try it as preliminary issue, the Division Bench in the matter of Punam Co-operative Housing Society (Civil Appeal arising out of SLP(C) No.2989/2012) upheld decision of the Single Judge. In the matter of Sou. Rama Vijay Kumar Oberoi (Civil Appeal arising out of SLP(C)Nos.16373-16375/2013), the defendant raised an objection that the suit was barred by limitation, the trial court held that the issue of limitation being a mixed question of fact and law could not

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be framed as a preliminary issue under Section 9A, CPC. In appeal, learned Single Judge of the High Court in the impugned order directed the trial court to frame a preliminary issue under Section 9A as to whether the suit was barred by limitation.

4. Since the question of law in all these appeals is similar, we would like to narrate the factual matrix of the case pertaining to Civil Appeal No.7732 of 2011 (Foreshore Co-operative Housing Society Ltd.) which relates to the rights enjoyed by the parties therein over the suit property. The Appellant is a co-operative housing society consisting of owners of various flats in the building 'Advent' which exists on the suit property. The Appellant filed Suit No.2939/1999 for declaring that Respondent Nos.1-6 and 8 have no rights whatsoever over the suit property and that they were not entitled to carry out construction of the building by name of 'Divya Prabha' within the suit property and for permanently

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restraining them from doing so. The Appellant also prayed for declaring the revalidation of the I.O.D. (Intimation of Disapproval) and commencement certificate by Respondent No. 7 - Municipal Corporation in 1998, 2004 and 2005 in favour of Respondent Nos. 1-6 and 8 to carry out construction of the building by name of 'Divya Prabha' in the suit property to be illegal.

5. The suit property was originally leased to the Golwals. In 1958, the Golwals entered into an agreement dated 17.03.1958 granting development rights over a portion of the suit property to Respondent No.1 and also executed a Power of Attorney in his favour. Respondent No. 1 in turn transferred these rights in favour of his company-Respondent No. 2 vide agreement dated 23.10.1959. Respondent Nos. 1 and 2 constructed the building 'Advent' whose flat owners are the members of the Appellant Society. The Municipal Corporation granted I. O. D. and

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commencement certificate to Respondent No.1 in 1966 for constructing a building by the name of 'Divya Prabha' in the suit property. In 1968, the Municipal Corporation issued notices for stopping the construction of 'Divya Prabha' on account of irregularities therein. Respondent No. 1 filed a suit challenging these notices, however after the plaint was returned for presentation before the proper court, the same was not pursued.

6. In 1968-69, disputes arose between the Golwals and Respondent Nos. 1 and 2 in relation to the land development agreement and the Power of Attorney executed in favour of Respondent No. 1 was revoked. The Golwals then assigned their entire leasehold interest in favour of the Appellant society vide agreement dated 25.03.1969 and the Appellant was confirmed as the lawful assignee by the Municipal Corporation.

7. The Appellant pleaded that in 1987, Respondent No.3 entered into the suit property and began carrying out construction of 'Divya Prabha' on the basis of an agreement purported to have been executed by Respondent Nos.1 and 2 in his favour in 1980 and on the basis of the agreement and power of attorney purported to have been executed in his favour by Golwala in 1984 and 1986 respectively. The Corporation is said to have issued a notice in 1987 to Respondent No. 3 to stop the construction and a suit challenging the same was filed by Respondent No. 3. The Appellant further pleaded that Respondent Nos.1-6 had executed a deed of assignment dated 14.10.1994 in favour of Respondent No. 8 selling the suit property and the building 'Divya Prabha' to the latter.

8. The Appellant filed Suit No. 6734/1994 in October, 1994 before the City Civil Court for declaring that Respondent Nos. 1-6 and 8 have no rights over the suit property, that they

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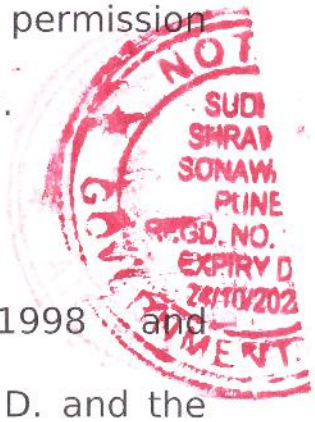
were not entitled to carry out construction within the suit property and for declaring that the revalidations of I. O. D. and the commencement certificate were illegal. On 28.06.1996, the validity of the I. O. D. and the commencement certificate of 1966 were extended till 19.06.1997 and the suit was amended to challenge the same. When the validity of the I.O.D. and commencement certificate expired, learned Single Judge of the High Court permitted Respondent Nos. 1-6 and 8 to apply again for revalidation and directed them to communicate any such order to the Appellant. Respondent No. 8 was alleged to have forcibly entered into the suit property on various occasions in 1998 and begun construction of 'Divya Prabha' without informing the Appellant of any grant of permission whereupon the Appellant filed a suit for injunction.



9. Revalidation certificates dated 18.09.1998 and 05.10.1998 were issued in relation to the I. O. D. and the

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commencement certificate, and the Appellant amended the plaint to challenge the same. However, by an order dated 16.04.1999, the plaint in Suit No. 6734/1994 was returned for presentation before the proper court as it was improperly valued and exceeded the jurisdiction of the City Civil Court. The Appellants filed an appeal against the said order, but afterwards withdrew it. In 1999, Appellant then filed a suit being Suit No. 2939/1999 before the Single Judge of the High Court, which was amended to challenge the revalidation certificates granted on 08.03.2004, 09.03.2004, 08.07.2004 and on 06.08.2005 during the pendency of the suit. This suit was also permitted to be amended in 2005 for incorporating pleadings to the effect that Suit No. 6734/1994 was filed and prosecuted before the City Civil Court in good faith and with due diligence.

10. The Appellant filed Notice of Motion for grant of injunction and Respondent No. 8 raised preliminary

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objections regarding the maintainability of the suit. Learned Single Judge noted that Section 9A of the Code of Civil Procedure provides for hearing an objection regarding the jurisdiction of the court to entertain a suit as a preliminary issue when such objection is raised in an application for grant of interim relief. In view of the same, learned Single Judge framed a preliminary issue as to whether Suit No.2939/1994 was barred by limitation or not. Learned Single Judge held that though the matter in issue in Suit No.6734/1994 and Suit No.2939/1999 was the same, the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as it had failed to prove that the earlier suit was pursued with due diligence and good faith. Learned Single Judge noted that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 after the reply to the notice of motion was filed and preliminary issue regarding jurisdiction was framed. The Appellant was required to prove not only

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the diligent prosecution of Suit No. 6734/1994 but also its diligent institution and the Single Judge held that the Appellant had failed to do so having been unable to show that the said suit was incorrectly valued despite due care and caution. The Appellant was also held to have not cited any particulars or evidence for having pursued the earlier suit in good faith. Learned Single Judge dismissed the suit as barred by limitation vide judgment dated 20.01.2006.

11. Aggrieved by the judgment of the Single Judge, Appellant filed an appeal before the Division Bench of the High Court. The Appellant pleaded that the bar of limitation was not a bar on the jurisdiction of the court and that the question of limitation was a question of law and fact which had to be decided along with the other issues in the suit. The Appellant also contended that it was entitled to the benefit under Section 14 of the Limitation Act, 1963 and that even assuming that it was not so entitled, the suit would still be

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within the period of limitation as the cause of action arose when the I. O. D. and the commencement certificate were revalidated on 18.09.1998 and 05.10.1998 and when the Respondents trespassed into the suit property on various occasions in 1998.

12. After hearing learned counsel on either side, the Division Bench held that the moment the issue of jurisdiction was raised under Section 9A of Code of Civil Procedure, such issue had to be decided first as the same was mandated under Section 9A and as valuable time could be saved in case it is found that the court does not have jurisdiction. The term "jurisdiction" under Section 9A was held to have been used in a wider sense and subject to any statutory bar on the maintainability of a suit. The Division Bench held that the court was bound to dismiss a suit barred by limitation as it had no jurisdiction to entertain the same. The plea of limitation was held to be a question of law which related to

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the jurisdiction of the court and the court was held to be precluded from adjudicating the matter on merits when the suit was barred by limitation. The Division Bench went on to hold that the suit herein, which was filed on 18.05.1999, was barred by limitation as the cause of action arose in April, 1994. The view of the Single Judge that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 was upheld. The Division Bench held that the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as there was no proof of the earlier suit having been prosecuted with due diligence and good faith and dismissed the appeal vide the impugned judgment.

13. Hence, the present appeals by special leave by the appellants.

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14. We have heard Mr. F.S. Nariman, Mr. P. Chidambaram, Mr. Shekhar Naphade, Mr. Jaideep Gupta, learned senior advocates appearing on behalf of the appellants. We have also heard Mr. Kapil Sibal, Mr. Salman Khurshid, Dr. A.M. Singhvi, Mr. Ashwini Kumar, Mr. A. Sharan, Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

15. At the very outset, Mr. Nariman drew our attention to the aim and object of bringing Section 9A by Maharashtra Amendment in the Code of Civil Procedure. According to the learned senior counsel, Maharashtra Legislature used the word 'jurisdiction' in all matters concerning jurisdiction, i.e. the pecuniary or territorial, notwithstanding that in Order XIV Rule 2 preliminary issue is to be raised only when it is of law. It cannot be raised when the issue of jurisdiction is a mixed issue of law and fact. According to Mr. Nariman, 'jurisidction' used in Section 9A is confined to its textual interpretation

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i.e., any plea as to the jurisdiction of the court with reference to the subject matter, territorial or pecuniary jurisdiction, which ousts the jurisdiction of the court. Mr. Nariman submitted that initially Section 9A was enacted by Maharashtra Amendment Act of 1969 because of judgments rendered by the Bombay High Court. It was only for the purpose of deciding objections as to the jurisdiction either territorial or pecuniary, Section 9A was inserted. Learned senior counsel submitted that since the date of enactment of Section 9A in 1970 the questions of territorial and pecuniary jurisdiction have been decided. Mr. Nariman then referring the decision of this Court in the case of ***Mathai vs. Varkey Varkey***, (1964) 1 SCR 495, submitted that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. In other words, courts having jurisdiction to decide right or to decide wrong and even though decide

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wrong, the decree rendered by them cannot be treated as nullity. The gist of the argument of Mr. Nariman and other counsel is that a preliminary objection as to jurisdiction under Section 9A would not include an objection that it is barred by limitation. Learned counsel put heavy reliance on the decision of this Court in ***Ramesh B. Desai and Ors. vs. Bipin Vadilal Mehta and Ors.***, (2006) 5 SCC 638.

16. Per contra, Mr. Kapil Sibal, learned senior counsel appearing for the respondents submitted that the application of Section 9A comes at the very initial stage of the suit whereas the provision of Order XIV Rule 2 can be invoked at the time of framing of issues. Learned counsel submitted that no prejudice would be caused inasmuch as the Court may in its discretion refuse to hear the preliminary issue. According to the learned counsel, question of limitation concerns the jurisdiction of the Court as the limitation goes to the root of jurisdiction. Mr. Sibal, relied upon a three

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Judges Bench decision of this Court in **Official Trustee W.B. vs. Sachindra** (1969) SC 823, **National Thermal Power Corporation Ltd. vs. Siemens Atkeingesellschaft**, (2007) 4 SCC 451.

17. Dr. A.M. Singhvi submitted that insertion of Section 9A by Maharashtra Amendment is a legislative policy decision of the State to entertain objection to jurisdiction at the initial stage and to decide it as preliminary issue. According to the learned counsel, the question of limitation is the question of jurisdiction and it has to be decided as a preliminary issue. Learned counsel put reliance on ***ITW Signode India Ltd vs. Collector of Central Excise,*** (2004) 3 SCC 48; ***Manick Chandra Nandy vs. Debdas Nandy and Others,*** (1986) 1 SCC 512; ***Kamlesh Babu and Others vs. Lajpat Rai Sharma and Others,*** (2008) 12 SCC 577.

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18. We have also heard Mr. Salman Khurshid and Mr. Ashwani Kumar, learned senior advocates appearing for the respondents. The submissions of learned counsel are as under:-

> The juridical and jurisprudential meaning of the term "jurisdiction" as used inter-alia in Section 9A of the CPC (as amended in 1977), and by virtue of Order XIV Rule 2 (b) initially interpreted in a catena of judgments, cannot be limited in its sweep to exclude a case where the suit/any part of the alleged cause of action is barred by limitation. Section 9A provides a self contained scheme and given its non-obstante clause, must prevail.
>
> A plea pertaining to the bar of limitation has been consistently held by the Supreme Court and followed by High Courts, as one giving rise to the issue of jurisdiction. An issue of limitation refers to a statutory bar to the exercise of jurisdiction.

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19. Learned counsel further submitted that upon a harmonious construction of the two provisions and considering the consistent judicial dicta whereby an issue of limitation is treated as a jurisdictional issue, Clauses (a) and (b) of Rule 2(2), Order XIV of the CPC ought to be read as jurisdictional issues although arising under different pleas.

20. Learned counsel further submitted that even otherwise the non-obstante clause inserted by the Maharashtra Amendment of 1977 in Section 9A of CPC and the express mandate of Section which is a self-contained scheme and a later expression of legislative intent, the policy and intention of the law is to decide an issue relating to jurisdiction of the court, on whatever grounds raised, as a preliminary issue, notwithstanding of any other provision in the CPC. Such an issue is to be decided at the hearing under Section 9A when

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the court is not precluded from considering the facts either on prima facie basis or otherwise.

21. Learned counsel also referred a catena of decisions for the proposition that question of limitation concerns the jurisdiction of court and such issue goes to the root of jurisdiction and may oust the jurisdiction of the court.

22. Similar argument have been advanced by Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

23. Section 9 of the Code of Civil Procedure confers power and jurisdiction to Courts to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For better clarification, Explanations (I)

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and (II) have been added. Section 9 with explanations reads as under:-

> **"9. Courts to try all civil suits unless barred:-** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
>
> Explanation I.—As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> Explanation II—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

24. A bare reading of the aforesaid provision would show that all suits of civil nature can be entertained by civil Courts. However, Explanation (I) clarifies as to what a suit of a civil nature is.

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25. Immediately, after Section 9, Section 9A was inserted by Code of Civil Procedure (Maharashtra Amendment) Act, 1970. Section 9A as inserted in the Code of Civil Procedure (Maharashtra Amendment) Act of 1970 reads as follows:-

> "9A. Where by an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at hearing of the application.
>
> (1) If, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

26. In the year 1976, the Code of Civil Procedure 1908 was extensively amended by the Code of Civil Procedure

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(Amendment) Act, 1976. Section 97 of the Amendment Act of 1976 *inter alia* provided that any amendment made in the Code by the State Legislature before commencement of the Amendment Act of 1976 shall, except insofar as they are consistent with the Code as amended by the Amendment Act, 1976 shall stand repealed. As a result, those amendments made in the CPC by the State Legislature which were inconsistent with the amendments brought in 1976 stood repealed.

27. After the aforesaid Section 9A of Maharashtra Amendment stood repealed, the State Legislature felt that certain amendments made by the Maharashtra State Amendment Act were useful and required to be continued. Hence, the State Legislature of Maharashtra re-enacted Section 9A with the assent of the President of India as required under Article 254(2) of the Constitution of India, so that the same may continue to prevail. Hence, by Section 3

of Maharashtra (Amendment) Act of 1976, it again inserted Section 9A in the Code of Civil Procedure. Section 9A which has been inserted in the 1977 by the State Legislature reads as under:-

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case he adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to be jurisdiction."

28. As noticed above, Section 9A was for the first time inserted by Amendment Act of 1970. The statement of objects and reasons for such amendment is quoted hereunder:-

> "The effect of the judgment of the High Court in Institute Indo-Portuguese vs. Borges (1958) 60 Bom. L.R. 660 is that the Bombay City Civil Court for the purposes of granting interim relief cannot or need not go into the question of jurisdiction. Sometimes declaratory suits are filed in the City Court without a valid notice under section 80 of the Code of Civil Procedure, 1908. Relying upon another judgment of the High Court recorded on the 7th September, 1961 in Appeal No.191 of 1960, it has been the practice of the City Court to adjourn a notice of motion for injunction in a suit filed without such valid notice, which gives time to the plaintiff to give the notice. After expiry of the period of notice, the plaintiff is allowed to withdraw the suit with liberty to file a fresh one. In the intervening period, the Court grants an ad interim injunction and continues the same. The practice of granting injunctions, without going into the question of jurisdiction even though raised, has led to grave abuse. It is therefore, proposed to provide that if a question of jurisdiction is raised at the hearing of any application for granting or setting aside an order granting an interim relief, the Court shall determine that question first."

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29. For the purpose of re-inserting Section 9A in 1977, after Section 9A stood repealed by 1976 CPC Amendment Act, the statement of objects and reasons of the relevant portion of said Bill is extracted hereinbelow:-

> "2. The Code has now been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (CIV of 1976) enacted by Parliament. Section 97 of the Amendment Act provides inter alia that any amendment made in the Code by a State Legislature before the commencement of the Act shall except in so far as they are consistent with the Code as amended by the Amendment Act, stand repealed. Unless there is an authoritative judicial pronouncement, it is difficult to say which of the State Amendments are inconsistent with the Code as amended by the Central Amendment Act of 1976 and which consequently stand repealed. All the amendments made in the Code by the State Acts, except the amendment made in the proviso to section 60(1) by the State Act of 1948, have been found to be useful and are required to be continued. The amendment made by the State Act of 1948 is no more required because it is now covered by the amendment made in clause (g) of the said proviso by the Central Amendment Act of 1976. But to leave no room for any doubt whether the remaining State amendments continue to be in force or stand repealed, it is proposed that the old amendments should be repealed formally and in their places similar amendments may be re-enacted, with the assent of the president under article 254(2) of the Constitution, so that they may continue to

prevail and be available in this State as before. The Bill is intended to achieve these objects.

3. The following notes on clauses explain the purposes of these clauses:-

Preamble – it gives the background and main reasons for the proposed legislation.

Clauses 2 and 3—Clause 2 formally repeals the State Act of 1970 and the new section 9A inserted by it, to make way for re-enacting by clause 3 of the same section in a slightly revised form."

30. The question that arises for consideration before this Court is as to whether the phrase "an objection to the jurisdiction of the Court to entertain such a suit" as used in Section 9A of the Maharashtra Manual would include an objection with regard to limitation. In other words, whether an issue relating to a bar to the suit created by law of limitation can be tried as preliminary issue under Section 9A of the Code.

31. For better appreciation of the object and interpretation of Section 9A, it would be proper to have a comparison with the provision contained in Order XIV Rule 2 of the Code of Civil Procedure. Rule 2 of Order XIV reads as under:-

> "**2. Court to pronounce judgment on all issues.-** (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
>
> (2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—
>
> (a) the jurisdiction of the court, or
>
> (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

32. Order XIV Rule 2 of the Code of Civil Procedure, confers power upon the Court to pronounce judgment on all the issues. But there is an exception to that general Rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof

may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law.

33. Order XIV Rule 2 of the Code of Civil Procedure as it existed earlier reads as under:-

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

34. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the un-amended Code, the categorization was only between issues of law and

of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if the Court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.

35. The moot question, therefore, that falls for consideration is as to whether courts shall be guided by the provisions of Order XIV Rule 2 of the Code of Civil Procedure or Section 9A

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of the Code as amended by Maharashtra Amendment Act, in the matter of deciding the objection with regard to jurisdiction of the court which concerns the bar of limitation as a preliminary issue.

36. Indisputably, the subject of Civil Procedure, including all matters included in the Code of Civil Procedure, is placed under Entry 13 in the Concurrent List of the VII Schedule appended to the Constitution of India. After Section 9A of Maharashtra Amendment Act stood repealed by Section 97 of the CPC Amendment Act of 1976 being inconsistent with the Code, the State Legislature of Maharashtra felt that certain amendments made by the earlier State Amendment Acts were useful and required to be continued. To leave no room for confusion as to whether the State Amendments continued to be in force or repealed, Section 9A was again re-enacted with the assent of the President of India under Article 254 (2) of the Constitution of India.

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37. As noticed above, Section 9A of the Maharashtra Amendment Act is a complete departure from the procedure provided under Order XIV Rule 2 of the Code of Civil Procedure. Notwithstanding the inconsistency contained in the Act of the Parliament viz., the Code of Civil Procedure and the provisions contained in Section 9A of the State Act, having regard to the fact that the assent of the President was received, the provisions of the said Section has to be complied with and can be held to be a valid legislation.

38. In the case of ***Meher Singh vs. Deepak Sawhny***, reported in 1998 (3) MhLJ 940 = 1999 (1) Bom CR 107, the question that referred to the Division Bench for its consideration was whether while deciding the preliminary issue of jurisdiction as contemplated under Section 9-A of the Code Civil Procedure (Maharashtra Amendment) Act, 1977 the parties are required to be given opportunity to lead evidence?. The Division Bench noticed that Section 9-A was added to the Civil Procedure Code by Code of Civil Procedure

(Maharashtra Amendment) Act, 1977. As per the amended provision if in a suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Before the learned Single Judge, it was contended that when the said issue is raised for determination, the Court is required to permit the parties to lead evidence. The Division Bench considered the amended provision as contained in Section 9-A vis-a-vis Order XIV Rule 2 of the Code of Civil Procedure and observed:-

> "13. In the result we hold that if Section 9-A is not added, then at interim stage, the Court is not required to decide the issue of jurisdiction finally and the Court by referring to the averments made in the plaint, would ordinarily determine whether or not the Court has jurisdiction to try the suit. However, it is apparent that section 9-A is added with a specific object to see that objection with regard to jurisdiction of the Court is decided as a preliminary issue. According to the Legislature, the practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. Hence the said section is added to see that issue of

> jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required."

39. From the statement of objects and reasons it is evident that the practice followed in the City Civil Court in filing the suits against the Government without giving notice under Section 80 of the CPC and after the interim relief continued the plaintiff takes permission to withdraw the suit and to file a fresh suit. As a matter of fact, the legislature intended to stop this abuse of process by introducing Section 9A in the CPC by Maharashtra amendment Act. By reason of such amendment the Court is now required to decide the issue of jurisdiction at the time of granting the relief or considering the application for vacating the interim relief.

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40. From reading of the aims and object of the Bill whereby Section 9A was inserted, the term 'jurisdiction' is used in a wider sense and is not restricted to the conventional definition either pecuniary jurisdiction or territorial jurisdiction as submitted by Mr. Nariman, learned senior counsel appearing for the appellant.

41. The term 'jurisdiction' is a term of art; it is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well settled interpretation of the term. The expression 'jurisdiction', as stated in Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:

> "314. **Meaning of 'jurisdiction'**: By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

> If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

42. In American Jurisprudence, Volume 32A, paragraph 581, it is said that

> "Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause."

Further, in paragraph 588, it is said that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties.

43. It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case

where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties.

44. Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of limitation, subject to the provisions contained in Sections 4 to 24, shall be dismissed although the limitation has not been set up as a defence.

45. A Constitution Bench of five Judges of this Court in the case of ***Pandurang Dhondi Chougule vs. Maruti Hari Jadhav***, 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of *res judicata* is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held:-

> "10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors

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> of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (*a*), (*b*) and (*e*) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115."
>
> (Emphasis given)

46. In the case of ***Manick Chandra Nandy vs. Debdas Nandy,*** (1986) 1 SCC 512, this Court, while considering the the nature and scope of High Court's revisional jurisdiction in a case where a plea was raised that the application under Order IX Rule 13 was barred by limitation, held that a plea of

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limitation concerns the jurisdiction of the court which tries a proceeding for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In the case of ***National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft,*** 2007 (4) SCC 451, this Court considering the similar question under the Arbitration and Conciliation Act held as under:-

> "17. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In *Pandurang Dhoni Chougule* v. *Maruti Hari Jadhav* this Court observed that: (AIR p. 155, para 10)
>
> > "It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code."

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47. In the case of ***Official Trustee vs. Sachindra Nath Chatterjee,*** AIR 1969 SC 823, a three Judges Bench of this Court while deciding the question of jurisdiction of the Court under the Trust Act observed:-

> "15. From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

48. In the case of ***ITW Signode India Ltd. vs. CCE,*** (2004) 3 SCC 48, a similar question came before a three Judges Bench of this Court under the Central Excise Act, 1944, when this Court opined as under:-

> "69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that

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> such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued."

49. In the case of ***Kamlesh Babu vs. Lajpat Rai Sharma***, (2008) 12 SCC 577, the matter came to this Court when the trial court dismissed the suit on issues other than the issue of limitation. The Bench held:-

> "23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate court to decide the limited question as to whether the suit was barred by limitation as found by the trial court. Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-

> barred, the decision of the first appellate court on the other issues shall not be disturbed."

50. Mr. Shekhar Naphade, learned senior counsel appearing for the respondent relied upon a recent decision of a Division Bench of this Court in Civil Appeal No. 1085 of 2015 (***Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors***.) where this Court while considering Section 9A of the Maharashtra Amendments of CPC observed that the expression 'jurisdiction" in Section 9A is used in a narrow sense i.e. territorial and pecuniary jurisdiction and not question of limitation. The Court observed:-

> "17. The expression "jurisdiction" in Section 9A is used in a narrow sense, that is, the Court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, *sensu stricto*, has to be considered with reference to the value, place and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a Court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a Court depends upon the pecuniary and territorial limits laid down by

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law and also on the subject-matter of the suit. While the suit might be barred due to non-compliance of certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the Court to try a suit or pass a decree. The law of limitation operates on the bar on a party to agitate a case before a Court in a suit, or other proceedings on which the Court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

19. Thus, with the intention to put the aforesaid practice to rest, the State Legislature introduced Section 9A by the amendment Act of 1969 requiring the Court to decide the issue of jurisdiction at the time of granting or vacating the interim relief. In other words, the legislature inserted section 9A to ensure that a suit which is not maintainable for want of jurisdiction of the concerned Court, ought not be tried on merits without first determining the question of maintainability of the suit as to jurisdiction of the Court, approached by the plaintiff, as a preliminary issue.

20. The provision contemplates that when an issue of jurisdiction is raised, the said issue should be decided at first as expeditiously as possible, and not be adjourned to a later date.
The primary reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.

21. A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a plaintiff drags a

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> defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful.
>
> 22. In the instant case, the preliminary issue framed by the Trial Court is with regard to the question of limitation. Such issue would not be an issue on the jurisdiction of the Court and, therefore, in our considered opinion, the Trial Court was not justified in framing the issue of limitation as a preliminary issue by invoking its power under Section 9A of the Code. The High Court has erred in not considering the statutory ambit of Section 9A while approving the preliminary issue framed by the Trial Court and thus, rejecting the writ petition filed by the appellant."

51. With great respect, we are of the view that the decision rendered by the Division Bench in the case of ***Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors***. is contrary to the law settled by the Constitution Bench and three Judges Bench of this Court, followed by other Division Bench in ***Pandurang Dhondi Chougule vs. Maruti Hari Jadhav***, AIR 1966 SC 153, (Five Judges Bench) in **Manick Chandra Nandy vs. Debdas Nandy**, (1986) 1 SCC 512, ***National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft***, (2007) 4 SCC 451, ***Official Trustee vs. Sachindra Nath Chatterjee*** AIR 1969 SC 823, ***ITW***

Signode India Ltd. vs. CCE, (2004) 3 SCC 48 and ***Kamlesh Babu vs. Lajpat Rai Sharma,*** (2008) 12 SCC 577. The Constitution Bench decision and other decisions given by larger Bench are binding on us. It appears that those decisions have not been brought to the notice of the Division Bench taking a contrary view.

52. Discussing the principle of binding precedents in the case of ***State of U.P. vs. Synthetics and Chemicals Ltd***. 1991(4) SCC 139, this Court in paragraph 40 and 41 held as under:-

> "40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, '*in ignoratium* of a statute or other binding authority'. (*Young* v. *Bristol Aeroplane Co. Ltd.*). Same has been . accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu* v. *Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from *Halsbury's Laws of England*

incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (*Salmond on Jurisprudence* 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd.* v. *Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi* v. *Gurnam Kaur*. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao* v. *Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as

> a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

53. The doctrine of binding precedents has been settled by several pronouncements of this Court. The Constitution Bench of this Court in the case of ***Union of India vs. Raghubir Singh***, (1989) 2 SCC 754, observed as under:-

> "8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.
>
> 9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

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54. In the case of ***Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha,*** (2001) 4 SCC 448, a Constitution Bench of this Court reiterated the same principle and held that:-

> "2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."

55. This Court in the case of ***Central Board of Dawoodi Bohra Community vs. State of Maharashtra***, (2005) 2 SCC 673, held as under:-

> "8. In *Raghubir Singh case,* Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case

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> including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

56. Mr. Nariman, learned senior counsel appearing for the appellant put heavy reliance on the decision in the case of ***Ramesh B. Desai vs. Bipin Vadilal Mehta,*** (2006) 5 SCC 638, for the proposition that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. In our considered opinion, in the aforesaid decision this Court was considering the provision of Order XIV Rule 2, CPC. While interpreting the provision of Order XIV Rule 2, this Court was of the view that the issue on limitation, being a mixed question of law and fact is to be decided along with other

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issues as contemplated under Order XIV, Rule 2, CPC. As discussed above, Section 9A of Maharashtra Amendment Act makes a complete departure from the procedure provided under Order 14, Rule 2, CPC. Section 9A mandates the Court to decide the jurisdiction of the Court before proceeding with the suit and granting interim relief by way of injunction.

57. At the cost of repetition, we observe that Section 9A provides a self-contained scheme with a non-obstante clause which mandates the court to follow the provision. It is a complete departure from the provisions contained in Order XIV Rule 2 CPC. In other words, the non-obstante clause inserted by Maharashtra Amendment Act of 1977 in Section 9A and the express mandate of the Section, the intention of the law is to decide the issue relating to jurisdiction of the court as a preliminary issue notwithstanding the provision contained in Order XIV Rule 2 CPC. However, it is made clear that in other cases where the suits are governed by the

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provisions of Order XIV Rule 2 CPC, it is the discretion of the court to decide the issue based on law as preliminary issue.

58. We, therefore, after giving our anxious consideration to the provisions of Code of Civil Procedure together with the amendments introduced by the State Legislature, hold that the provision of Section 9A as introduced by (Maharahtra Amendment) Act is mandatory in nature. It is a complete departure from the provisions of Order XIV, Rule 2, C.P.C. Hence, the reasons given by the High Court in the impugned orders are fully justified. We affirm the impugned orders passed by the High Court.

59. For the reasons aforesaid, we do not find any merit in these appeals, which are accordingly dismissed with no order as to costs.

.....J.
(M.Y. Eqbal)

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.....J.
(Kurian Joseph)

New Delhi,
April 08, 2015.

NOTARY
SUDHIR SHRAWAN SONAWANE
PUNE
REGD. NO. 10404
EXPIRY DT. 24/10/2028
GOVERNMENT OF INDIA

TRUE COPY
SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

REVISED

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION(C) No.2856/2015

IN

CIVIL APPEAL No.3396/2015

NUSLI NEVILLE WADIA Petitioner (s)

VERSUS

FERANI HOTELS PRIVATE LIMITED & ORS Respondent(s)

O R D E R

This Review Petition is disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

.....J
(L. NAGESWARA RAO)

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

NEW DELHI;
06th May, 2022.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10406 EXPIRY DT. 24/10/2023 GOVERNMENT OF INDIA

TRUE COPY
SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

Digitally signed by GEETA AHUJA
Date: 2022.05.18 19:21:39 IST
Reason:

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION(C) No.2856/2015

IN

CIVIL APPEAL No.3396/2015

NUSLI NEVILLE WADIA Petitioner (s)

VERSUS

FERANI HOTELS PRIVATE LIMITED & ORS Respondent(s)

O R D E R

We have perused the Review Petition and the connected papers. We do not find any error in the impugned order, much less an error apparent on the fact of the record, so as to call for its review.

The review petition is , accordingly, dismissed. Pending application(s) shall stand disposed of.

.....J
(L. NAGESWARA RAO)

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

NEW DELHI;
06th May, 2022.

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REVISED SIGNED ORDER

ITEM NO.27 COURT NO.5 SECTION IX

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

Petition(s) for Special Leave to Appeal (C) No(s).31982-31983/2013

(Arising out of impugned final judgment and order dated 20-09-2013 in SN No.414/2008 19-09-2013 in AN No.414/2008 passed by the High Court Of Judicature At Bombay)

NUSLI NEVILLE WADIA Petitioner(s)

VERSUS

IVORY PROPERTIES AND HOTELS PVT. LTD. & ORS. Respondent(s)

WITH
R.P.(C) No.2856/2015 In C.A. No.3396/2015 (III)

Date : 06-05-2022 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Darius J.Khambata,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Mr. Tushar Hathiramani,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

Mr. Navroz Seervai,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.

M/S. Karanjawala & Co., AOR

For Respondent(s) Dr. A.M. Singhvi, Sr. Adv
Mr. Shyam Divan, Sr. Adv
Mr. Milind Sathe, Sr. Adv
Mr. Mahesh Agarwal, Adv
Ms. Hemlata Jain, Adv
Mr. Ankur Saigal, Adv
Mr. Parul Shukla, Adv
Mr. Rohan Talwar, Adv
Mr. E. C. Agrawala, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Ms. Rooh-e-hina Dua, AOR
Mr. Avishkar Singhvi, Adv.
Ms. Ananya Sikri, Adv.
Mr. Akarsh Sharma, Adv.

Ms. Ranjeeta Rohatgi, AOR
Ms. Purnima Bhat, AOR
Mr. Kaushik Poddar, AOR

UPON hearing the counsel the Court made the following

O R D E R

SLP(C)Nos.31982-31983/2013:

These Special Leave Petitions are disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

R.P.(C) No.2856/2015 In C.A.No.3396/2015:

The review petition is disposed of in terms of the signed order. Pending application(s), if any, shall stand disposed of.

(B.Parvathi)
Court Master

(Anand Prakash)
Assistant Registrar

(Revised Signed order is placed on the file)

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ITEM NO.27 COURT NO.5 SECTION IX

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

Petition(s) for Special Leave to Appeal (C) No(s).31982-31983/2013

(Arising out of impugned final judgment and order dated 20-09-2013 in SN No.414/2008 19-09-2013 in AN No.414/2008 passed by the High Court Of Judicature At Bombay)

NUSLI NEVILLE WADIA Petitioner(s)

VERSUS

IVORY PROPERTIES AND HOTELS PVT. LTD. & ORS. Respondent(s)

WITH
R.P.(C) No.2856/2015 In C.A. No.3396/2015 (III)

Date : 06-05-2022 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Darius J.Khambata,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Mr. Tushar Hathiramani,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

Mr. Navroz Seervai,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

For Respondent(s) Dr. A.M. Singhvi, Sr. Adv
Mr. Shyam Divan, Sr. Adv
Mr. Milind Sathe, Sr. Adv
Mr. Mahesh Agarwal, Adv
Ms. Hemlata Jain, Adv
Mr. Ankur Saigal, Adv
Mr. Parul Shukla, Adv
Mr. Rohan Talwar, Adv
Mr. E. C. Agrawala, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Ms. Rooh-e-hina Dua, AOR
Mr. Avishkar Singhvi, Adv.
Ms. Ananya Sikri, Adv.
Mr. Akarsh Sharma, Adv.

Ms. Ranjeeta Rohatgi, AOR
Ms. Purnima Bhat, AOR
Mr. Kaushik Poddar, AOR

UPON hearing the counsel the Court made the following

O R D E R

SLP(C)Nos.31982-31983/2013:

These Special Leave Petitions are disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

R.P.(C) No.2856/2015 In C.A. No.3396/2015:

The review petition is dismissed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10408 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

(B.Parvathi)
Court Master

(Anand Prakash)
Assistant Registrar

(Signed order is placed on the file)

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NOTARY GOVT. OF INDIA
PUNE

125

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

CURATIVE PETITION (CIVIL) NOS. 193-194 OF 2021

IN

REVIEW PETITION (CIVIL) NOS. 1534-1535 of 2020

IN

SPECIAL LEAVE PETITION (CIVIL) NOS. 31982-31983 OF 2013

FERANI HOTELS PRIVATE LIMITED PETITIONER(S)

VERSUS

NUSLI NEVILLE WADIA RESPONDENT(S)

O R D E R

We have gone through the Curative Petitions and the relevant documents. In our opinion, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra vs. Ashok Hurra & Another, reported in 2002 (4) SCC 388. Hence, the Curative Petitions are dismissed.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2026 GOVERNMENT OF INDIA

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
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Validity unknown
Digitally signed by Rajni Mukhi
Date: 2022.08.02 17:30:38 IST
Reason:

.....CJI.
[N.V.RAMANA]

.....J.
[UDAY UMESH LALIT]

.....J.
[A.M. KHANWILKAR]

.....J.
[M.R. SHAH]

.....J.
[B.R. GAVAI]

NEW DELHI;
JULY 19, 2022

126

ITEM NO.1004 SECTION IX

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

CURATIVE PETITION (C) NOS. 193-194/2021 in
REVIEW PETITION (C) NOS. 1534-1535/2020 in
PETITION FOR SPECIAL LEAVE TO AP (C) No. 31982-31983/2013

FERANI HOTELS PRIVATE LIMITED Petitioner(s)

VERSUS

NUSLI NEVILLE WADIA Respondent(s)

(FOR ADMISSION)

Date : 19-07-2022 This petition was circulated today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE B.R. GAVAI

By Circulation

UPON perusing papers the Court made the following
O R D E R

The Curative Petitions are dismissed in terms of signed order.

(RAJNI MUKHI)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)

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NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2026 GOVERNMENT OF INDIA

Annexure R6

127

बृहन्मुंबई महानगरपालिका

क्र.उअउ/परि-4/ 72 /ओ/ऽ

उप उद्यान अधिक्षक (परि-4) यांचे कार्यालय
के/पश्चिम विभाग कार्यालय इमारत,
3 रा मजला, एलिराम पथ,
अंधेरी(पश्चिम), मुंबई. 400051.
दि. 28/05/ 2024

प्रति,
मे. फेरानी हॉटेल्स प्रा. लिमिटेड,
कंस्ट्रक्शन हाऊस, B-623, लिंकिंग रोड,
खार टेलिफोन एक्सचेंज समोर, खार(प), मुंबई -400052

विषय: न. भू. क्र. 827/A/4A/1, खडकपाडा, मालाड(पू.), मुंबई येथील भूखंडावर पूर्वीपासून अस्तित्वात असलेली व नवीन वृक्षारोपण करण्यात आलेल्या झाडांबाबत

संदर्भ: 1) क्र. SG/473 dtd 09/05/2024
2) क्र. SG/OD/161 Dtd 15/06/2023

महोदय,

उपरोक्त विषयानुसंदर्भात आपला मा. सहाय्यक आयुक्त, पी/उत्तर यांचे कार्यालयास सादर केलेला दि. 07/07/2023 रोजीचा अर्ज कृपया संदर्भित करावा. सदर अर्जास अनुसरून न. भू. क्र. 827/A/4A/1, खडकपाडा, मालाड(पूर्व) या ठिकाणी दि. 13/09/2023 रोजी उद्यान विभागातील मा. उप - उद्यान अधिक्षक (परि-4) , कनिष्ठ वृक्ष अधिकारी , पी/उत्तर आणि मे. फेरानी हॉटेल्स प्रा. लिमिटेड यांचे प्रतिनिधी उपस्थित होते.

त्यास अनुसरून न. भू. क्र. 827/A/4A/1 या भूखंडावर दि.14/09/2023 रोजी प्रत्यक्ष स्थळपाहणी करतांना नवीन वृक्षारोपण करण्यात आलेली एकूण 1003 (एक हजार तीन) झाडे सद्धस्थितित आढळून आलेली आहेत. त्याअनुषंगाने सदरचा स्थळपाहणी अहवाल उप- उद्यान अधिक्षक(वृक्ष प्राधिकरण) यांच्या माहीतीसाठी दि.08/05/2024 रोजी सादर केला होता. सदरचा अहवाल उप- उद्यान अधिक्षक(वृक्ष प्राधिकरण) यांनी मा. मा. उद्यान उद्यान अधिक्षक यांच्या अवलोकनार्थ सादर केला असता मा. उद्यान उद्यान अधिक्षक यांनी सदरहू जागेवर अस्तित्वात असलेल्या 1003 (एक हजार तीन) वृक्षांची व्यवस्थित निगा राखणेबाबत व सदर झाडे संवर्धित करणेबाबत अ देशित केले आहे.

तरी आपणास याद्वारे सूचित करण्यात येते की, सदरहू जागेवरील सद्धस्थितित अस्तित्वात असलेल्या एकूण **1003 (एक हजार तीन)** वृक्षांची योग्य ती काळजी घेण्यात यावी व सदर वृक्षांच्या वाढीचा व स्थितीबाबतचा अहवाल दर वर्षी पूढील तीन वर्षापर्यंत या कार्यालयास सादर करण्यात यावा. तसेच भूखंडावर पूर्वीपासून अस्तित्वात असलेली व नवीन वृक्षारोपण करण्यात आलेल्या झाडांबाबत ड्रोन फोटोग्राफी व व्हिडिओ रेकॉर्डींगचा अहवाल सादर करणेबाबत क्र. एस जी/ओडी/161 दि.15/06/2023 अन्वये कळविण्यात आले होते. परंतू सदरचा अहवाल कार्यालयास अद्याप प्राप्त झाला नाही. तरी याबाबतचा अहवाल कृपया या कार्यालयास त्वरीत सादर करण्यात यावा.

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NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 11444 EXPIRY DT. 24/10/2029 GOVERNMENT OF INDIA

उप- उद्यान अधिक्षक(परि-4)

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Annexure 127

128

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134

Annexure R-8

महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम, १९६६
बृहन्मुंबई क्षेत्राच्या पी/एन प्रभागाच्या सुधारित मंजूर
विकास योजनेमधील प्रस्तावित फेरबदलाबाबत कलम
३७(१एअे)(सी) खालील सूचना.....

महाराष्ट्र शासन

नगर विकास विभाग

क्रमांक :- टिपीबी ४३१३ /प्र.क्र. १९१/ २०१३/ नवि-११

मंत्रालय, मुंबई :४०० ३२,

दिनांक – ५ एप्रिल २०१६.

शासन निर्णय : सोबतची अधिसूचना शासनाच्या साधारण राजपत्रात प्रसिध्द करण्यात यावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व

(किशोर द. गिरोल्ला)
अवर सचिव, महाराष्ट्र शासन.

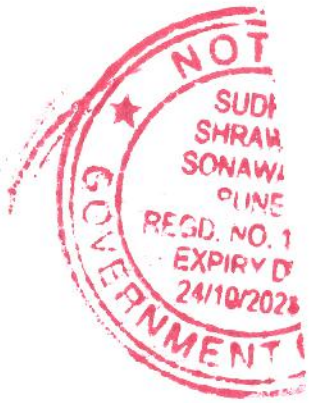
प्रत,

मा. मुख्यमंत्री महोदयांचे प्रधान सचिव.
मा. राज्यमंत्री, नगर विकास विभाग यांचे खाजगी सचिव.

प्रति,

(१) अपर मुख्य सचिव, गृह विभाग, मंत्रालय, मुंबई ४०० ०३२.
(२) आयुक्त, बृहन्मुंबई महागनरपालिका.
(३) संचालक, नगर रचना, महाराष्ट्र राज्य, पुणे
(४) सह सचिव, तथा संचालक, नगर रचना, नगर विकास विभाग, मंत्रालय, मुंबई.
(५) उप संचालक, नगर रचना, बृहन्मुंबई.
(६) व्यवस्थापक, शासकीय मध्यवर्ती मुद्रणालय, वर्ळीरोड, मुंबई.
(त्यांना विनंती करण्यात येते की, सोबतची शासकीय अधिसूचना महाराष्ट्र शासनाचे साधारण राजपत्रात भाग-१ मध्ये प्रसिध्द करुन त्याच्या १० प्रती नगर विकास विभाग (नवि-११), मंत्रालय, मुंबई : ४०० ०३२ व उपसंचालक, नगर रचना, बृहन्मुंबई यांना पाठविण्यात याव्यात.)
(७) कक्ष अधिकारी, माहिती व तंत्रज्ञान विभाग (त्यांना विनंती करण्यात येते की, सोबतची सूचना विभागाच्या वेबसाईटवर प्रसिध्द करण्याबाबत आवश्यक ती कार्यवाही करावी)
(८) निवड नस्ती (नवि-११)

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA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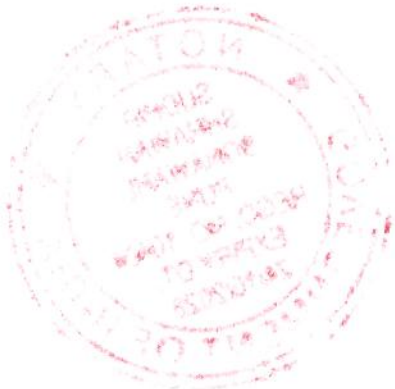


136

Maharashtra Regional and Town Planning Act, 1966.
Sanctioned modification to Revised Development Plan of Gr. Mumbai (P/N Ward) under Section 37(1AA)(c)of the Act..

GOVERNMENT OF MAHARASHTRA
Urban Development Department,
Mantralaya, Mumbai 400 032.
Dated 5th April, 2016.

NOTIFICATION

No. TPB 4313/CR-191/2013/UD-11:

Whereas the Development Plan of "P/N" Ward of Greater Mumbai (hereinafter referred to as "the said plan") has been sanctioned by the Government under section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") vide Urban Development Department's Notification No. TPB 4392/6176/UD-11 (RDP) dated 25/4/1993 and the same came into force with effect from 29/4/1993.

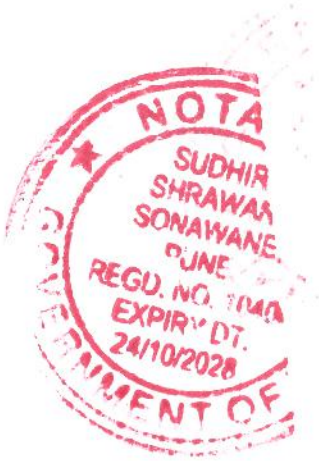
And whereas, the land admeasuring about 80934 sq.mt. bearing S. No. 239/1(pt), CTS No. 827A/4A/2 of village Malad (East) (hereinafter referred to as "the said land")is included in No Development Zone as per the said plan ;

And whereas, M/s. D.B. Realty Pvt. Ltd. CA of Shri Tarashankar Choubey has represented to Police Commissioner, Mumbai that it is willing to develop the said land partly for Police Housing purpose and partly for free sale purpose. The lands in the vicinity of the said land are generally developed. The Govt. has considered the acute shortage of Police Housing & after due consideration of all facts and considering the development in the vicinity of the said lands is of the opinion that the said land has development potential as proposed by the developer;

And whereas, the State Government in Home Department has examined the proposal submitted by the developer through the Police Commissioner and have stipulated some conditions;

And whereas, after considering the above facts and circumstances, the Government found it expedient to urgently include the said land in Residential Zone from No Development Zone and to be reserved for Police Housing subject to certain conditions:

And whereas, the Government in exercise of the powers conferred under sub-section (1AA) of Section 37, had issued Notice No. CMS/TPB 4308/405/CR-259/2009/UD-11 dated 2nd September 2009 for inviting suggestions/objections from general public with regard to include the said land in Residential Zone from No Development Zone and a to reserve it for Police Housing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(hereinafter referred to as "the proposed modification) and appointed the Deputy Director of Town Planning, Greater Mumbai as the officer (hereinafter referred to as "the said Officer") to submit a report on the suggestions/objections received in respect of the proposed modification to the Govt. after giving hearing to the concerned persons and the Municipal Corporation of Greater Mumbai;

And whereas, the Notice No. CMS/TPB 4308/405/CR-259/2009/UD-11 dated 2nd September 2009 was published in Maharashtra Government Gazette dated 10-16th September 2009 and the said Officer has submitted his Report vide letter No. 1958 dt. 7th November 2009 through the Director of Town Planning, Maharashtra State, after completing the legal formalities stipulated under Section 37(1AA) of the said Act;

And whereas, after considering the Report of the said Officer, the suggestions/objections received from the general public and after consulting the Director of Town Planning, Maharashtra State, the Government is of the opinion that the proposed modification is required to be sanctioned with some changes ;

Now therefore, in exercise of the powers conferred upon it under section 37(1AA)(c) of the said Act, the Government [illegible] :-

(A)Sanctions the said modification proposal as follows :--

" The land bearing S.No. 239/1(pt), CTS No. 827A/4A/2 of village Malad (E) admeasuring 80934 sq.mt. is deleted from No Development Zone and included in Residential Zone and reserved for reservation of "Police Housing" along with 18.00 mtr. wide road on the following conditions:

(i) A buffer zone of 10 mt. shall be reserved between the said land and adjoining forest land.

(ii) The Appropriate Authority for the development of said land shall be the State Government in Home Department .

(iii) The above said reservation shall be developed by Appropriate Authority according to the provisions of Regulation 33(3)(B) of Development Control regulations for Greater Mumbai.

(iv) The Developer shall develop 18 mt. wide road at his own cost. The maximum gradient of road shall be allowed upto 8%.

(v) In any case the regulations in respect of Police Housing component shall be strictly followed to avoid misuse of the said component and the work of this component will be started at earliest.

(vi) The above development is subject to draft Notification dt.22.1.2016 and rules/regulations imposed by Ministry of Environment, Forest & Climate for Eco-Sensitive Zone, from time to time

(B) Fixes the date of publication of this Notification in the Official Gazette, as the date on which the said modification shall come into force;

(C) Directs the Municipal Corporation of Greater Mumbai that, in the Schedule of Modifications appended to the Notification sanctioning the said Development Plan, after the last entry a new entry as per (A) above shall be added.

A plan showing the sanctioned modification shall be kept open for the inspection by the general public during the office hours on all working days at following places :-

(1) Office of the Deputy Director of Town Planning., Greater Mumbai, having his office at ENSA Hutments, E-Block, Azad Maidan, Mahapalika Marg, Mumbai 400001.

(2) Office of the Chief Engineer (Development Plan) Municipal Corporation of Greater Mumbai, Mahapalika Marg, Mumbai 400001.

This Notification shall also be available on the Govt. of Maharashtra website : www.maharashtra.gov.in

By order and in the name of the Governor of Maharashtra,

(Kishor D. Girolla)
Under Secretary to Government.

TRUE COPY

SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

NOTARY
SUDHIR SHRAWAN SONAWANE
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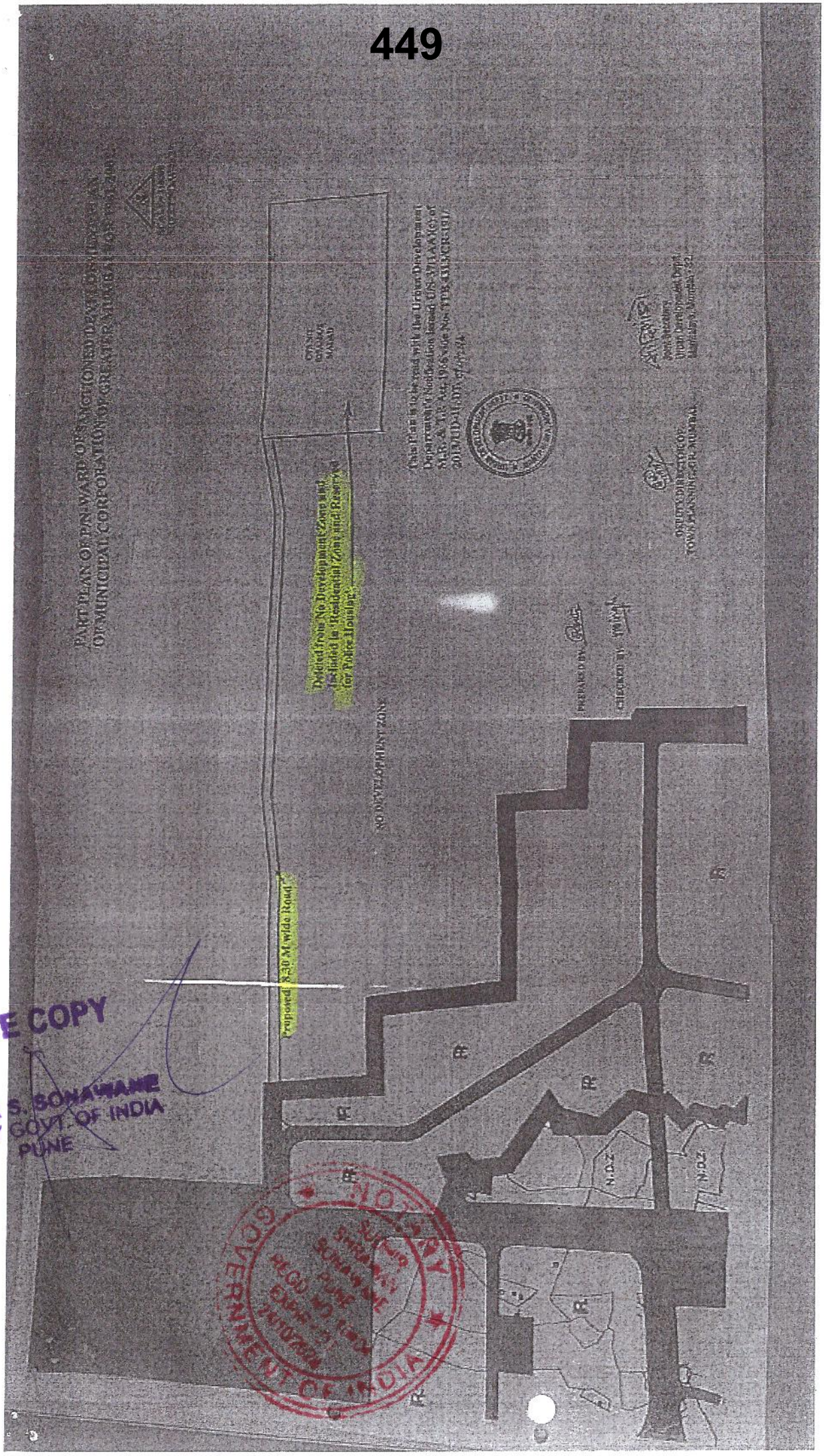
REGD. NO. 1040
EXPIRY DT. 24/10/2028
GOVERNMENT OF INDIA



Annexure R-9

उप वनसंरक्षक, ठाणे वन विभाग
यांचे कार्यालय
मॅरेथॉन सर्कल, लाल बहादूर शास्त्री मार्ग, नौपाडा, ठाणे
(पश्चिम) – ४००६०२

OFFICE OF THE
DEPUTY CONSERVATOR OF FORESTS
THANE FOREST DIVISION
Marathon Circle, LBS Marg, Naupada, Thane (West) – 400602

☎ 022-25421373, Email : dcfthane@gmail.com, dycfthane@mahaforest.gov.in

Letter

Sub : Permission of Sanjay Gandhi National Park Eco Sensitive Zone Monitoring Committee for proposed development of residential and commercial project on plot bearing CTS No. 827A/4A/1 at village Malad East, Mumbai within ESZ.

No.Desk/1/20/LND/ESZ/ 3929 of 2018-19

Thane-400602, Dated : 01 November, 2018

To,

M/s. Ferani Hotels Pvt. Ltd.,
Construction House-B,
Second Floor, 623, Linking Road,
Opposite Khar Telephone Exchange,
Khar, Mumbai – 400052.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2020 GOVERNMENT OF INDIA

Ref : 1) MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGENOTIFICATION No. S.O. 3645(E), dated 05.12.2016
2) PCCF (WL) MS Nagpur's letter No. Desk-23(2)/Survey/ WL/Case No.225/2286/2017-18, Dated 26.10.2017

1. The MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, Government of India *vide* NOTIFICATION No. S.O. 3645(E), dated 05.12.2016, constituted a Monitoring Committee under chairmanship of Municipal Commissioner/Additional MunicipalCommissioner, MCGM for effective monitoring of Eco Sensitive Zone of the Sanjay Gandhi National Park.

2. Your proposal was received by this committee vide under reference no. 02 for construction of residential and commercial buildings in CTS No. 827A/4A/1 at village Malad East, Mumbai.

3. The Sanjay Gandhi National Park Eco Sensitive Zone Monitoring Committee's meeting was held on dated 09.01.2018, 16.02.2018, 17.07.2018& 04.09.2018. In those meeting your proposal was discussed by the committee. This proposal is within the Scope of regulated activities in para no.11 as per above mentioned notification under reference no.01. The SGNP ESZ Monitoring committee has considered this proposal for construction of residential and commercial building in CTS No. 827A/4A/1 at village Malad East, Mumbai in meeting held on 19.09.2018, subject to the following conditions.

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4. Specific Conditions

I	This order is only ân approval of Monitoring Committee of Eco Sensitive Zone of Sanjay Gandhi National Park, as constituted vide notification dated 05.12.2016 and shall not be considered as environmental clearance. Environmental clearance and other permissions as applicable shall be separately obtained by project proponent as applicable to the project.
II	The project authority should construct of animal proof design concreate compound wall of 8 feet height plus 4 feet chain link fencing (not to install barb wire) on the common boundary of Sanjay Gandhi National Park and proponants land in place of existing boundary wall. The construction of the compound wall should be started within three months of approval of this project and completed within one year from the date of approval.
III	It should be ensured that sewerage treatment plant, solid waste management, effluent waste management and / or Organic Garbage Waste Convertor units should be beyond the distance of 100 meters after the boundary of the Sanjay Gandhi National Park.
IV	Discharge of effluents -- The discharge of treated effluent in Eco-sensitive Zone shall be in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the rules made thereunder.
V	The project authority shall give an undertaking, to deposit "Conservation and Protection Fund" for conservation & protection of Sanjay Gandhi National Park. If directed by government/competent authority.
VI	This order is applicable only for construction plan shown in layout plan submitted by project authority. If the project authority want to carry out any activity/development which is not shown in layout plan a separate proposal shall be submitted for the same.
VII	Safety of any wild animal visiting the proposed facility during and after construction/development phase shall be the responsibility of the project proponent, should a rescue and rehabilitation of any visiting wild animal becomes necessary, Project proponents shall be bound to provide sufficient resources for it. Project proponent may create special facilities in construction with Field Director of SGNP.

5. The conditions as per ESZ Notification

All activities in the Eco sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 (29 of 1986), and the rules made thereunder and are regulated in the manner specified hereunder vide Clause No. 4 listing activities prohibited or to be regulated or promoted within the Eco-Senstitive Zone are shown in Government of India *vide* NOTIFICATION No. S.O. 3645(E), dated 05.12.2016 on Pages 5 to 8 in Hindi and on Pages 24 to 27 in English.

Essential conditions

1.	The said project has been considered for Sanjay Gandhi National Park Eco Sensitive Zone Monitoring Committee's clearance with reference to the scope of prohibited, regulated and promoted activities of the notification mentioned earlier for the eco-sensitive zone of the Sanjay Gandhi National Park.

2.	The Sanjay Gandhi National Park Eco Sensitive Zone Monitoring Committee's clearance has been considered without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this order does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.
3.	In case of submission of false document and non-compliance of stipulated conditions, ESZ SGNP Committee/ Authority/ Environment Department will revoke or suspend this order without any intimation and initiate appropriate legal action under Environmental Protection Act, 1986 and the MoEFCC notification for ESZ SGNP, as would be applicable.
4.	The ESZ SGNP Committee reserves the right to add any stringent condition or to revoke the order if conditions stipulated are not implemented to the satisfaction of the department or for that matter, for any other administrative reason.
5.	In case of any deviation or alteration in the project proposed from those submitted to this department for clearance, a fresh reference should be made to the department to assess the adequacy of the condition(s) imposed and to incorporate additional environmental protection measures required, if any.
6.	The above stipulations would also be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and rules there under, Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public Liability Insurance Act, 1991 and its amendments.
7.	E-waste shall be disposed through authorised agency as per E-waste (Management& Handling) Rules, 2016
8.	This eco sensitive zone clearance is issued subject to obtaining NOC from the statutory bodies as applicable to this project.
9.	If applicable, consent for establishment shall be obtained from MPCB under Air and Water Act and copy shall be submitted to the Environment Department before start of any construction work at the site.
10.	All required sanitary and hygienic measures should be in place before starting construction activities and should be maintained throughout the construction phase.
11.	Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of waste water and solid waste generated during the construction phase should be ensured.
12.	The solid waste generated should be properly collected and segregated. Dry/Inert solid waste should be dispose off to the approved sites for land filling after recovery of recyclable material.
13.	Arrangement shall be made to ensure that waste water and storm water do not get mixed.
14.	The diesel generators sets to be used during construction phase should be low sulphur diesel type and confirm to Environment (Protection) Rules prescribed for air and noise emission standards.

NOTARY SUDHIR SHRAWAN AWANE INDIA

15.	The diesel required for operating DG sets shall be stored in underground tanks and if required, clearance from concern authority shall be taken.
16.	Vehicle hired for bringing construction material to the sites should be in good condition and should have a pollution check certificate and should confirm to applicable air and noise emission standards and should be operated only during non-peak hours.
17.	Ambient noise level should be confirmed to residential standard both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should make to reduce ambient air and noise level during construction phase, so as to confirm to the stipulated standard by CPCB/MPCB.
18.	Ready mix concrete must be used in building construction.
19.	The installation of sewerage treatment plan (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Discharge of unused treated effluent, if any, should be discharged in the sewerage line. Treated effluent emanating from STP shall be recycled/ reused to the maximum extent possible. Discharge of this unused treated effluent, if any should be discharged in the sewerage line. Treatment of 100% gray water by decentralized treatment should be done. Necessary measure should be to mitigate the odour problem from STP.
20.	Roof should meet prescriptive requirement as per Energy conservation building code by using appropriate thermal insulation material to fulfill requirement.
21.	Diesel power generating sets proposed as source of backup power for elevators and common area illumination during operation phase should be of enclosed type and confirm to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel. The location of the DG sets may be decided in consultation with Maharashtra Pollution Control Board.
22.	Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.
23.	The buildings should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.
24.	Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings.
25.	Under the provisions of Environment (Protection) Act, 1986 legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining environmental clearance.
26.	Wet garbage should be treated by Organic Waste Converter and treated waste (manure) should be utilized in the existing premises for gardening. Wet garbage will not be disposed outside the premises. Local authority should ensure this.
27.	A complete statement of all the documents submitted to department should be forwarded to the local authority and MPCB.

28.	A separate environment management cell within the PP with qualified staff shall be set up for implementation of the stipulated environmental safeguards.

Member Secretary,
Sanjay Gandhi National Park Eco Sensitive Zone Monitoring committee
And
Deputy Conservator of Forests,
Thane Forest Division, Thane

Copy submitted to

1. The Additional Municipal Comissioner (W.S), MCGM, Opp.CST Station, Mumbai – 400001.
2. The Chief Conservator of Forests and Director, Sanjay Gandhi National Park, Borivali.
3. Deputy Municipal Comissioner (Zone -VII), MCGM, Third floor, R/ South ward office building, Mahatma Gandhi Cross Road No.2, Nr. Sardar Vallabhbhai Patel swimming pool, Kandivali (West), Mumbai -400067.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10460 EXPIRY DT. 24/10/2020 GOVERNMENT OF INDIA

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

30. Be it noted that grievance about publication of the second Ranked List (RL-II) during the pendency of appeal before this Court and despite the order of status quo, was not pursued before this Court on behalf of the appellants. We find force in the argument of the respondents that the order of status quo though interdicted processing of the first Ranked List (RL-I), that restriction stood lifted with setting aside of the decisions of the Tribunal and the High Court and allowing the appeal on 13.10.2015. Sans any direction by this Court and challenge to publication of the second Ranked List (RL-II) on 26.5.2015, nothing came in the way of the respondents to proceed with the final advice made on 11.11.2015 relating to 339 empanelled candidates from the first Ranked List (RL-I), who in turn, commenced their training on 1.5.2016.

31. Considering the indisputable facts and unexceptionable finding recorded by the Full Bench which commends to us, it must follow that the appellants were not entitled to base their claim in reference to the first Ranked List (RL-I), which had ceased to exist on 1.6.2016, by filing writ petition(s) on 12.10.2017 for the stated reliefs. As the first Ranked List (RL-I), in law, ceased to exist from 1.6.2016, no relief could be granted to the appellants and the principles of actus curiae neminem gravabit and lex non cogit ad impossibilia will be of no avail, as it was not a case of any prejudice caused to the appellants on account of Court order as such.

32. Having said thus, we uphold the judgment of the Full Bench of the High Court, which is impugned in these appeals.

33. Accordingly, these appeals fail and the same are accordingly dismissed with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

Appeal dismissed.

* * * * * * * * * *

AIR 2020 SUPREME COURT 3471
: AIROnline 2020 SC 640

(From : Bombay)

ROHINTON FALI NARIMAN,
S. RAVINDRA BHAT AND
V. RAMASUBRAMANIAN, JJ.

Civil Appeal No. 6932 of 2015 with5971 of 2019,4379 of 2018,2741 of 2020(Arising out of Diary No. 19018 of 2018),C.A. NO. 6862 of 2018,2742 of 2020,(Arising out ofSLP (C) No. 28178 of 2018),C.A. No. 11803 of 2018,2743 of 2020 (Arising out ofSLP (C) No. 1706 of 2019),C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019), D/- 14-7-2020.

Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch and Others.

(A) National Green Tribunal Act (19 of 2010), Ss. 14(2)(3), 15(1)(a),17(1),29, Sch.II — Jurisdiction of National Green Tribunal (NGT) — If violation is the result of infraction of any enactment listed in first schedule — NGT has circumscribed jurisdiction to deal with, adjudicate, and direct payment of compensation, or make restitutionary directions.

Interpretation of Statutes — Intention of legislature.

A conjoint reading of Ss. 14, 15 of Act of 2010 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, is not warranted. The reference to Sch. II, in S. 15(4) is not merely by

way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Sch. I. The wide language of that provision enables the tribunal (NGT) to direct, inter alia, payment of compensation, "having regard to the damage to public health, property and environment". This interpretation is borne out by a reading of S. 17(2) regarding the apportionment of liability for payment of compensation. **(Paras 36, 37)**

(B) National Green Tribunal Act (19 of 2010), Ss. 14(2), (3), 15(1)(a), 17(1), 29, Sch.I, II — Environment (Protection) Act (29 of 1986), S. 3 — Environment (Protection) Rules (1986), R. 5 — Constitution of India, Art. 48A (as inserted by Constitution (Forty-second Amendment) Act, 1976) — Order of penalty — Jurisdiction of National Green Tribunal (NGT) — Debris and part of hill collapsed and slid down to road, taking lives of mother and her daughter — Mining lease covered area in excess of 5 hectares — No evidence to show that environmental clearance was obtained — Prima facie violation of Environment (Protection) Act (EPA) listed in Sch. I — NGT's jurisdiction under S. 15(1)(a) and S. 17, not disputed.

Acting under the provisions of the Environment (Protection) Act (EPA), the Central Government had issued a notification, mandating Environmental Impact Assessment (EIA) in exercise of its power under S. 3(2) of the EPA r/w. R. 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification, the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction. Environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the State had granted not less than 62 minor mineral permits in the vicinity, unauthorized activity (in the form inter alia, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because mining lease covered an area in excess of 5 hectares it fell within the regulatory notification. There is nothing on record to show that the relevant clearance was obtained. Plainly, therefore, the facts of the present case disclosed violation of the EPA, an enactment listed in Sch. I of the NGT Act. This meant that the NGT's jurisdiction under S. 15(1)(a) and S. 17 could not have been disputed. That includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case. **(Paras 47, 50, 51)**

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(C) National Green Tribunal Act (19 of 2010), Ss. 18(1) Proviso, 14(2), (3), 15(1)(a),17(1), 29 — National Highway Authority Act (48 of 1956), Ss. 4, 5,16 — Order of compensation — Debris and part of hill collapsed and slid down to road, taking lives of mother and her daughter — Direction of NGT to pay compensation towards death, and damages towards restitution — Absence of legal representatives or heirs of deceased in proceedings or initiation of independent civil action, neither impediment, nor could be precluded NGT from exercising its jurisdiction — Direction to NHAI and license holder, jointly making them liable to pay Rs. 15 lakhs, justified.

Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of highway in question. Having regard to the duty imposed on the NHAI by virtue of S. 4 and 5 of the Highways Act, r/w. S. 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies, also, the NHAI's correspondence with local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to the person applying for license to extract minor minerals (license holder) similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure of license holder to take measures to prevent the accident, prima facie, disclose their liability. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit is directed to revive and continue it a direction is issued to the concerned court. The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a prima facie determination. Consequently, the direction to the NHAI and license holder, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, license holder, the state or any other party (including the concessionaire). Supreme court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and license holder shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum of Rs. 10 lakhs shall be deposited in

the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/ planting of trees etc.**(Paras 65, 66, 67)**

(D) Maharashtra Regional and Town Planning Act (37 of 1966), S.154 — National Green Tribunal Act (19 of 2010), Ss. 15(1)(b),(c), 14,16,17 4(4), 35 — National Green Tribunal (Practice and Procedure) Rules (2011), R. 24 — Powers of NGT — To issue directions banning development and building activities — General directions for future guidance, to avoid or prevent injury to environment for appropriate assimilation in relevant rules, can be given by NGT.

As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.**(Paras 72, 75)**

(E) Maharashtra Regional and Town Planning Act (37 of 1966), S. 154 — National Green Tribunal Act (19 of 2010), Ss. 15(1)(b), (c), 14, 16, 17 — Control by State Government — Validity of notification/direction issued by State Government that development was impermissible in area abutting 'hills' up to 100 feet — Direction neither premised on any Central or State Government programmes, policies or projects nor based on scientific evidence or report of technical expert — Notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain — This makes it not only vague, but also arbitrary — Use of S. 154 amounted to modification of all regional and development plans — Directions set aside.

Hon'ble National Green Tribunal in exercise of powers under S. 154 of the Maharashtra Regional Town Development and Town Planning Act 1966, the directions were issued to all planning authorities in the state that: The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills up to 100 feet should be shown as No development/ Open space Reservation. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR. In the event the

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100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for non-buildable purposes such as open space, road et cetera. Direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. Use of S. 154 of MRTP Act, in the present case, in fact amounted to modification of all existing plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of views of affected parties. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). Those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them. Hence, impugned judgment of the Bombay High Court cannot be sustained and it is set aside. Consequently, the directions in the notification under S. 154 are hereby quashed.**(Paras 87, 90, 91)**

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Narasimha, Vijay Verma, Shyam Divan, Senior Counsel, Ms. Shilpa Chohan, for Appearing Parties.

S. RAVINDRA BHAT, J.:- Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the Aam Aadmi Lokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negatived the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth respondent; PS Toll Road (Pvt.) Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project

(i.e. the highway stretch) as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, inter alia, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8.[1] Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "unusual occurrences on the Project Highway" such as death or injury to any person (clause 19.6), any obstruction, or "flooding of Project Highway".

4. In the meanwhile, the fifth respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the Government. By clause 1 of the terms of this license, the period of the license was two months; clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to

1. In terms of Clause 19.4.2, the measure of damages which NHAI could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer" The same clause (17.8.1) stated that:

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof."

the village. The materials enclosed by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State Government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhor issued an order directing payment of Rs.1,271,200 by Rathod for violation of the Land Revenue Code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

"...large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation."

The letter also mentioned specifically that Rathod had been notified; it sought action from the State Government.

8. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was heavy rainfall at Mauje Shindewadi Tehsil, Bhor and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhor, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub- Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

9. Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and

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18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

10. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The State had apparently imposed fines and penalties for these illegal activities.

11. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that respondent:

"It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials."

12. Thereafter, the NGT based on its reasoning that the regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

"12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

Hill - noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.

The wordbook has given meaning of expression 'Hill' as follows:

231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhor before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, in spite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha Vadekar, and her daughter if identity of legal representatives is proved before the Collec-

tor. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder."

Rathod, the NHAI and three other appellants (Patel India Pvt Ltd, Fern Constructions (India) Ltd and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

13. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

14. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

"In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is indiscriminable cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such direc-

tions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone, then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.

24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by sub-section (1) of section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these

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supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the petitioners, we should strike down the Government Resolution."

15. The NHAI in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr P.S. Narasimha that the NGT's findings are contrary to established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth flow of water.

16. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

17. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State Government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the State, which granted the mining licences. Rathod, the licensee, had continued illegal

mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of Rs. 50 lakhs or any part of it.

18. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the State, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

19. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of Rs. 15 lakh and further pay amounts towards environmental damage, was unwarranted.

20. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the State authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in accordance with the evidence led. Instead the NGT took upon itself the task of a judging the appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the State Authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too re-

mote and could not have been the subject of damages at all.

21. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra under Section 154 of the MRTP Act, the third party appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17(e) of its order.

22. These appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17(e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

23. Learned senior counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of 'hill' is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the "no construction within the hundred feet area" rule, it is submitted, is completely contrary to well-established principles of town planning.

24. It is argued that the directions issued by the State Government impugned in the writ petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the State Government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.

25. It is further submitted that the NGT's directions were the basis of the State Government's notification. It was argued that

the State Government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this court in Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. and Ors.[2] to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

26. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the State Government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

27. So far as the Rathod's role is concerned, learned counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private respondents. It was submitted that apart from the enquiry report of the magistrate /sub-divisional officer, a report was also commissioned by the NGT through the local tehsildar; that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

28. It is argued further that the private respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or

2. 2019 SCC OnLine SC 221 : *(AIR 2019 SC 1074).*

partial disability or other injury, damages to private property, expenses incurred by the Government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

29. Ms. Chohan cited the decision of this court in Mantri Technoze Pvt. Ltd. v. Forward Foundation[3] to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in Hanuman Laxman Aroskar v. Union of India[4].

30. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

31. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the vires of the directions/ notifications issued under Section 154, MRTP Act.

I. Jurisdiction of the NGT

32. The relevant provisions of the NGT Act are extracted below:

3. 2019 (18) SCC 494 : *(AIROnline 2019 SC 495).*

4. 2019 (15) SCC 401 : *(AIROnline 2019 SC 318).*

"2. Definitions. - (1) In this Act, unless the context otherwise requires

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(m) "substantial question relating to environment" shall include an instance where-

(i) there is a direct violation of a specific statutory environmental obligation by a person by which-

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

XXXXXX XXXXXX XXXXXX

14. Tribunal to settle disputes.-(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

15. Relief, compensation and restitution.-(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

"16. Tribunal to have appellate jurisdiction.- Any person aggrieved by,

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

17. Liability to pay relief or compensation in certain cases.

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an

activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by-

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

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29. Bar of jurisdiction.-(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such

claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

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"33. Act to have overriding effect.-The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

33. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to "civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved" relating to the implementation of "the enactments specified in Schedule I" [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15(1) provides that compensation or damages can be given by the NGT to "victims of pollution and other environmental damage arising under the enactments specified in the Schedule I" [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

"divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit."

34. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

35. Schedule II reads as follows:

"SCHEDULE II [See sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

36. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

37. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, inter alia, payment of compensation, "having regard to the damage to public health, property and environment". This interpretation is borne out by a reading of Section 17(2) regarding the apportionment of liability for payment of compensation.

38. In the decision of this court reported as Hinch Lal Tiwari v. Kamala Devi[5] , this court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in Jitendra Singh v. Ministry of Environment and Ors[6] , the Court quoted and applied the observations in Hinch Lal (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

39. Long ago, in State of Tamil Nadu v. M/s. Hind Stone and Ors[7] , this court made following observations:

"6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a dutyto all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 ..."

40. Likewise, in Lafarge Umiam Mining (Pvt.) Ltd. v. Union of India and Ors.[8] these pertinent observations were made:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and

5.2001 (6) SCC 496 : *(AIR 2001 SC 3215).*

6.2019 SCC OnLine SC 1510 : *(AIROnline 2019 SC 1537).*

7.1981 (2) SCC 205 : *(AIR 1981 SC 711).*

8 2011(7) SCC 338 : *(AIR 2011 SC 2781).*

environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well-settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

41. Recently, in State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee and Ors.[9] this court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the State of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

42. The legal position and jurisdiction of NGT was considered by this court in Mantri Techzone (supra) where it was held that the NGT has "special jurisdiction" for "enforcement of environmental rights." It was held that:

"41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579 : *(AIR 2007 SC 1819), para 17)*. The exist-

9.2019 (8) SCC 177 : *(AIROnline 2019 SC 399)*.

ence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and water bodies in contradiction with zoning regulations under these statutes or the RMP."

43. It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act." Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

44. As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment" which "has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

45. The definition of "environment" under the EPA is wide and is an inclusive one: "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property"[10]. Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment[11];

"environmental pollution" means the presence in the environment of any environmental pollutant;[12]

Section 3 (1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.- (1) Subject to the provisions of this Act, the Central Government, shall have the powerto take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."

46. Long back, in M.C. Mehta v. Union of India[13] this court recognized the potential harm to the environment caused by mining operations:

"Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [(1991) 1 SCC 598 : *(AIR 1991 SC 420).*)

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment,natural resources and people's life, health and property, the prin-

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10 Section 2 (a) EPA.

11. Section 2 (b) EPA.

12. Section 2 (c) EPA.

13.(2004) 12 SCC 1 18 : *(AIR 2004 SC 4016).*

ciples of accountability for restoration and compensation have to be applied."

47. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power under Section 3(2) of the EPA read with Rule 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

48. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF and CC) submitted in 2010 was critical of the prevailing norms. As a result, this court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

49. The following observations of this court were made in Deepak Kumar v. S tate of Haryana[14] :

"18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. Thedecision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"4.0. Issues and recommendations

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It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories

14.(2012) 4 SCC 629 : *(AIR 2012 SC 1386).*

so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

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4.5.Requirement of mine plan for minor minerals

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

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4.8. Uniform minor mineral concession rules

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

4.9. Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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5.0. Conclusion

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, there-

fore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States."

(emphasis supplied)

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

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28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."

50. By virtue of a notification[15], environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form inter alia, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA- an enactment listed in Schedule I of the NGT Act. This meant that the NGT's jurisdiction under Section 15(1)(a) and Section 17 could not have been disputed.

51. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central Government to coordinate the activities of various Central and State Authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environmentthat includes water , air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central Government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

52. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub-divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing

15. No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette.

pre-monsoon work was sought from the concessionaire. However, the concessionaire did not submit an action plan despite lapse of one month.

53. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert -type structure and the size at the time of the old highway was 1m x 1m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway via the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

54. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

"4. National highways to vest in the Union. - All national highways shall vest in the Union, and for the purposes of this Act "highways" include-

(i) all lands appurtenant thereto, whether demarcated or not;

(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.-It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

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8A. Power of Central Government to enter into agreements for development and maintenance of national highways - (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and op-

cration of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

55. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

"16. Functions of the Authority.- (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government."

56. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

57. This issue had arisen in Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum[16] in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions[17] and stated that

"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to beconsidered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has

16.(1997) 9 SCC 552 : *(AIROnline 1997 SC 183)*.

17. Gorris v . Scott [(1874) 9 Exch 125] and Kilgollan v. William Cooke and Co. Ltd. (1956) 2 All ER 294, CA].

caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time corelative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the corelative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public- spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.

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24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exer-

cise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [(1921) 3 KB 132 : 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action....

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39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. ..."

58. In the UK, the duty of a highway authority was described by Diplock L.J. in Griffiths v. Liverpool Corporation[18] as follows:

"The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."

Again, Diplock, LJ stated in Burnside v. Emerson[19] described the duty as follows:

"in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."

59. Later, in Haydon v. Kent County Council[20] Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

"If section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under section 58 has been made out. Parliament did not define those facts for the purpose of section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount andnature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of

18.(1967) 1 Q.B. 374.

19.(1968) 1 W.L.R. 1490.

20. (1978) Q.B. 343.

the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."

60. In Stovin v. Wise[21], the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "Drivers of vehicles must take the highway network as they find it". It was held that statutory power could not be converted into a common law duty. The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."

61. Stovin (supra) and its enunciation that the existence of a public duty did not per se extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in Gorringe v. Calderdale Metropolitan Borough Council [22]. The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in Robinson v. Chief Constable of West Yorkshire Police[23], which observed as follows:

"32 At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example, Entick v. Carrington (1765) 2 Wils KB 275 and Mersey Docks and Harbour Board v. Gibbs (1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed. (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.

33. Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example, Dorset Yacht Co. Ltd v. Home Office1970 AC 1004, as explained in Gorringe's case 2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question: Geddis v. Proprietors of Bann Reservoir (1878) 3 App Cas 430. It follows

21.1996 (3) All ER 801:

22.2004 (1) WLR 1057.

23.2019 (2) All ER 1041.

that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.

34. On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in Michael's case 2015 AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" (2016) CLJ 128:

"In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."

35. As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example,

Barrett v. Enfield London Borough Council 2001 2 AC 550 and Phelps v. Hillingdon London Borough Council (2001) 2 AC 619, as explained in Gorringe's case 2004 (1) WLR 1057, paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example, Smith v. Littlewoods Organisation Ltd. 1987 AC 241, concerning a private body, applied in Mitchell v. Glasgow City Council (2009) AC 874, concerning a public authority.

36. That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well-known illustration of that principle is the decision of the House of Lords in East Suffolk Rivers Catchment Board v. Kent (1941) AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care": Gorringe's case 2004 (1) WLR 1057, para 23.

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40. However, until the reasoning in the Anns case was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including Hill's case 1989 AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in Gorringe's case. Since that case, a public authority's non-liability for the consequences of an omission can gener-

ally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.

41. Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see Gorringe's case 2004 (1) WLR 1057, para 38, per Lord Hoffmann.

42. That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."

62. In Yetkin v. Mahmood[24] , where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

"...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a causeof this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established."

63. A similar approach was indicated by this court in Municipal Corpn. of Delhiv . Sushila Devi[25] (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

"13. By a catena of decisions, the law is well-settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown v. Harrison [1947 WN 191 : 63 TLR 484], Quinn v. Scott [(1965) 1 WLR 1004 : (1965) 2 All ER 588] and Mackie v. Dumbartonshire County Council [1927 WN 247]). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi v. Subhagwanti [AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni

24.201 1 QB 827.

25.(1999) 4 SCC 317 : *(AIR 1999 SC 1929) at page 323.*

Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," - said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such atree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."

This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in Vadodara Municipal Corporation v. Purshottam V. Muranji[26].

64. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it inter alia, states that:

"During pre-monsoon rains all the excavated muck has been carried to NH4 alongwith rain water and block Satara bound trafficlane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

65. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, prima facie, disclose their liability.

66. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court,

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26.2014 (16) SCC 14 : *(AIR 2015 SC 321).*

was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

"Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application."

67. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a prima facie determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the State Government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos III and IV: Correctness of NGT's directions contained in Para 17(e) of its impugned order, and the legality of the order/notification of the State of Maharashtra, issued under Section 154, MRTP Act

68. As to the third point, two issues arise for consideration - firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

69. In the All Dimasa Student Union case[27], this court considered the nature of powers and jurisdiction of NGT. The relevant discussion is as follows:

"156. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and

27. See f.n.9 (supra).

16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows[28] :

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28. "19. Procedure and powers of Tribunal.-(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

157. Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What sub-section (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Sub-section (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on theT ribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

"10-A. Commission for scientific investigations.-(1) Where any question arising in a suit involves any scientific investigation which

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above."

70. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed under Sections 4(4) and 35 of the NGT Act)[29] This court then held as follows:

"160. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] : *(AIR 1971 SC 33)*, wherein this Court was examining provision empowering author-

29. The said rule reads as follows:

"24. Order and directions in certain cases. - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

ity to do something. This Court laid down in para 14: (SCC p. 359)

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164. We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case."

71. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

72. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

73. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in Securities Exchange Commission v. Chenery Corp.[30] This case arose from an order of the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of thePublic Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general regulation and observed that:

"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situ-

30.332 U.S. 194 (1947).

ations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency."

74. Similar observations were made by this court in PTC India v. Central Electricity Regulatory Commission[31] . The court stated as follows, after analysing the provisions of the Electricity Act 2003:

"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "betweenlegislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.

50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

75. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

76. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded- without any rationale and based on no scientific or technical evidence,

31.2010 (4) SCC 603 : *(AIR 2010 SC 1338)*.

or experts' opinion, that development and construction should not be carried out within 100 feet of a "lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops". The decisions of this court, including the All Dimasa Students Union case (f.n. 9); Mantri Technoze Pvt. Ltd case (f.n.3); the Hanuman Laxman Aroskar case (f.n. 4) and the Tamil Nadu Pollution Control Board case (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

77. To consider the last issue, i.e. validity of the notification/direction issued by the State Government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure - the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to be submitted to the State Government for approval. On approval of the plan by the State Government under Section 15, the final regional plan has to be published under Section 17.

78. Chapter III deals with the procedure for preparation of development plans by a planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter under Section 26, the planning authority has to prepare a draft development plan, not later than two years

from the date of notice published under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of Government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

79. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(c) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undevel-

oped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

80. So far as plans and developments that were approved before the impugned notification was issued, this court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this court in T. Vijayalakshmi v. Town Planning Member[32] . This court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

"Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force."

81. This court has ruled, that even modification to an existing development plan, under the MRTP Act, under Section 37, is in the nature of a legislative function. This court had observed under Pune Municipal Corpn. v. Promoters and Builders Assn[33] speaking of Section 37 (1) that:

"4. Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessaryinquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And

32.(2006) 8 SCC 502 : *(AIR 2007 SC 25).*

33.(2004) 10 SCC 796 : *(AIR 2004 SC 3502).*

for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720] : *(AIR 1987 SC 1802)*, SCC paras 5 and 27. See generally H.S.S.K. Niyami v.Union of India [(1990) 4 SCC 516 : *(AIR 1990 SC 2128)*] and Canara Bank v. Debasis Das [(2003) 4 SCC 557: 2003 SCC (L and S) 507] : *(AIR 2003 SC 2041)*.) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat [1990 Supp SCC 397 : *(AIR 1990 SC 1851)*].) Therefore, the view adopted by the High Court does not appear to be correct.

82. This issue was again underscored by this court in Machavarapu Srinivasa Rao v. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority[34], where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

"20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

83. In a decision which concerned change in development plan under the MRTP Act, this court observed that any changes in a

34.(201 1) 12 SCC 154 : *(2011 AIR SCW 5424)*.

development or master plan involve consultations and a high degree of expertise, in MIG Cricket Club v. Abhinav Sahakar Education Society[35] :

"28. It is well-settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to thedecision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same."

84. Now, under the provisions of the MRTP Act[36] , regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc, while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

85. The unamended Section 154 of the MRTP Act read as follows:

"154 Control by the State Government

(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority,Section 14 and 22 and the S tate Government, the decision of the State Government on such dispute shall be final."

86. Section 154(1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154 (1)] reads as follows:

"154. (1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions."

35.(201 1) 9 SCC 97 : *(2011 AIR SCW 5939).*

36. Section 14 and 22.

87. Directions can be issued "notwithstanding" any other provisions of the Act, "for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time." No doubt, the non-obstante clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or State Government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT
DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 4000032
Government Resolution No. TPS-1817/
ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/ Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet, should be shown as No development/Open space Reservation.

2. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.

3. In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for non-buildable purposes such as open space, road et cetera.

In the name of and by order of the Hon'ble Governor State of Maharashtra"

88. There are several authorities for the proposition that though an administrative order need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In Shri.

Sitaram Sugar Mills Company v. Union of India,[37] (which concerned the zoning regulations for the purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires.

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

89. In Cellular Operators Association v. Telecom Regulatory Authority of India,[38] this court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no rationale or are arbitrary:

"62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.

63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the

37.(1990) 3 SCC 223 : *(AIR 1990 SC 1277)*.

38.(2016) 7 SCC 703 : *(AIR 2016 SC 2336)*.

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Annexure R11

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मुख्य वनसंरक्षक व संचालक, संजय गांधी राष्ट्रीय उद्यान, बोरीवली यांचे कार्यालय
☎०२२-२८८६०३६२, २८८६०३८९, Email : sgnpmumbai@gmail.com

पत्र

विषय : मौजे मालाड, सर्वे क्रमांक २३९/१पै मध्ये दिनांक ०३.१२.२०१८ रोजी लागलेल्या आगीबाबत ..

जा.क्र. कक्ष-९/गुन्हे/वणवा/२८४६/२०१८-१९
बोरीवली, मुंबई, दिनांक : १९ जानेवारी, २०१९

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2020 GOVT OF INDIA

प्रति,
मे. फेरानी हॉटेल्स प्रा. लि.,
कन्स्ट्रक्शन हाऊस - बी, दुसरा मजला,
६२३, लिकींग रोड, खार टेलीफोन एक्स्चेंज समोर,
खार, मुंबई - ४०००५२

संदर्भ : १) वनक्षेत्रपाल तुळशी यांच्याकडील नोटीस क्र. तुळशी/आग/३४५३/२०१८-१९, दि. १९.१२.२०१८
२) आपल्याकडील पत्र दिनांक ०४.०१.२०१९

मौजे मालाड, सर्वे क्रमांक २३९/१पै मधील आपल्याकडील क्षेत्रात दिनांक ०३.१२.२०१८ रोजी लागलेल्या आगीत भुस्तरावरील सुके गवत व ज्वलनशील जैविक वस्तुमान नष्ट झाले व पर्यायाने लगतच्या राष्ट्रीय उद्यानास संपुर्ण आग विझेपर्यंत धोका निर्माण झाला होता. आपल्याकडील वरील क्षेत्रात आग लागण्याच्या घटनेस प्रभावी प्रतिबंधात्मक कार्यवाही करण्यात आल्याचे कोणतेही सबळ पुरावे प्रत्यक्षात दिसून आले नसल्याने आपणाविरुध्द कायदेशीर कारवाई का करण्यात येऊ नये याबाबत आपले म्हणणे सादर करण्यास संदर्भ क्र. १ अन्वये कळविण्यात आले आहे.

यावर सदर क्षेत्रात काही दुराचारी व अवांछित घटकांव्दारे अपप्रवेश करुन धुम्रपान/अंमली पदार्थांचे सेवन केले जात असल्याने आग लागण्याचे प्रकार घडत असल्याचे निदर्शनास आल्याबाबत आपण संदर्भ क्र. २ अन्वये कळविले असून याकरीता सदर क्षेत्रास कुंपण घालण्यासाठी आपणाव्दारे बृहन्मुंबई महानगरपालिकेकडून परवानगी प्राप्त करुन घेण्यात आल्याचेही कळविले आहे.

आपणाकडील संदर्भ क्र. २ अन्वये प्राप्त स्पष्टीकरणाच्या अनुषंगाने आपणास कळविण्यात येते की, संजय गांधी राष्ट्रीय उद्यानाच्या अधिसूचीत वनक्षेत्रालगतच्या मौजे मालाड, सर्वे क्र. २३९/१पै मधील आपल्याकडील क्षेत्रात आग लागण्याच्या घटनांस प्रतिबंध करण्यासाठी आपणाव्दारे स्वखर्चाने खालील प्रमाणे उपाययोजना कराव्या.

१. दरवर्षी वर्षातून किमान दोन वेळा विषयांकित क्षेत्रातील वाळलेले गवत/झुडपांची कटाई करावी.
२. उक्त परिसरातील आपल्याकडील क्षेत्र व संजय गांधी राष्ट्रीय उद्यानाचे अधिसूचीत वनक्षेत्र यामध्ये स्वखर्चाने जाळरेषा घ्यावी. जाळरेषा घेण्याची कार्यवाही वनक्षेत्रपाल तुळशी यांच्या उपस्थितीत त्यांच्या मार्गदर्शनाखाली करावी.
३. सदर क्षेत्रास कुंपण घालून सुरक्षारक्षक नेमावेत.
४. कार्यकारी अभियंता (पर्जन्यजल वाहिन्या), बृहन्मुंबई महानगरपालिका यांच्याकडील पत्र क्र. Dy.ChE/9133/SWD/WS dt. 13.12.2018 अन्वये विहीत अटी/शर्ती नूसार विषयांकित क्षेत्रातील नाल्यास Gate/Screen लावण्याची कार्यवाही करावी.

वरील प्रमाणे उपाययोजना करुन त्याबाबतचा पुर्तता अहवाल या कार्यालयास सादर करावा.

मुख्य वनसंरक्षक व संचालक,
संजय गांधी राष्ट्रीय उद्यान, बोरीवली

प्रतिलिपी : सहाय्यक आयुक्त, पी/उत्तर विभाग, बृहन्मुंबई महानगरपालिका यांच्याकडे माहितीसाठी अग्रेषीत.
प्रतिलिपी : उप प्रादेशिक अधिकारी, महाराष्ट्र प्रदुषण नियंत्रण मंडळ, सायन, मुंबई यांच्याकडे माहितीसाठी अग्रेषीत.
प्रतिलिपी : उप मुख्य अग्निशमन अधिकारी, बृहन्मुंबई महानगरपालिका यांच्याकडे माहितीसाठी अग्रेषीत.
प्रतिलिपी : पोलीस निरिक्षक, दिंडोशी पोलीस ठाणे यांच्याकडे माहितीसाठी अग्रेषीत.
प्रतिलिपी : वनक्षेत्रपाल तुळशी यांच्याकडे माहिती व आवश्यक कार्यवाहीसाठी रवाना.

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