

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT THANE**

I.A. NO.197 OF 2022

IN

APPEAL NO.12 OF 2017

Maharashtra State Road

Development Corporation Ltd. ... Applicant

In the matter between:

Dileep B. Nevatia ... Appellant

Versus

Union of India & Ors. ... Respondents

**COMPILATION OF JUDGMENTS ON BEHALF OF THE
APPLICANT.**

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(1986) 1 SCC

Government by order dated October 1, 1976 accorded its approval to their appointment in the Indian Administrative Service. Furthermore, the respondents as non-cadre officers could not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota was over-utilised: *Harjeet Singh v. Union of India*³ and *Amrik Singh v. Union of India*⁴.

16. The result therefore is that the appeals must fail and are dismissed. There shall be no order as to costs.

17. We are constrained to observe that although the judgment of the High Court in *K.L. Jain case*¹ was rendered as far back as September 9, 1983 and that in the case of *G.N. Tiwari*² on December 16, 1983, the directions issued by the High Court have not been implemented so far. We hope and trust that the Central Government will take steps to comply with the directions issued by the High Court forthwith.

(1986) 1 Supreme Court Cases 100

(BEFORE R.S. PATHAK, O. CHINNAPPA REDDY, R.B. MISRA, JJ.)

Civil Appeal No. 2310 of 1984†

FORWARD CONSTRUCTION CO.

AND OTHERS

.. Appellants :

Versus

PRABHAT MANDAL (REGD.), ANDHERI

AND OTHERS

.. Respondents.

And

Civil Appeal No. 2311 of 1984†

MUNICIPAL CORPORATION OF

GREATER BOMBAY

.. Appellants :

Versus

PRABHAT MANDAL AND OTHERS

.. Respondents.

With

Petition for Special Leave to Appeal (Civil) No. 7404 of 1984

PRABHAT MANDAL AND OTHERS

.. Petitioners.

Versus

MUNICIPAL CORPORATION OF GREATER

BOMBAY AND OTHERS

.. Respondents.

3. (1980) 3 SCR 459 : (1980) 3 SCC 205 : 1980 SCC (L&S) 351 : AIR 1980 SC 1275

4. (1980) 3 SCR 485 : (1980) 3 SCC 393 : 1980 SCC (L&S) 415

†From the Judgment and Order dated November 14, 1983 of the Bombay High Court in A. No. 644 of 1982 and O.S.W.P. No. 2412 of 1982

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Civil Appeals Nos. 2310 and 2311 with Petition for
Special Leave to Appeal (Civil) No. 7404 of 1984,
decided on November 26, 1985

Constitution of India — Articles 226 and 32 — Public interest litigation — Concept, object and scope stated — Writ petition filed under Article 226 challenging user of land by municipal corporation for a commercial purpose different from that for which land had been reserved and designated under development plan as well as town planning scheme, held, maintainable (Paras 2, 12 to 14)

S.P. Gupta v. Union of India, (1982) 2 SCR 365 : 1981 Supp SCC 87, relied on

Civil Procedure Code, 1908 — Section 11 Explanation VI — Applies to bona fide public interest litigations — If previous proceeding was not a bona fide public interest litigation, subsequent proceeding would not be barred by res judicata — Principle applicable to writ petitions as well — Constitution of India, Articles 226 and 32

Held :

Explanation VI, Section 11 CPC applies to public interest litigation as well but it must be proved that the previous litigation was a public interest litigation not by way of a private grievance. It was to be a bona fide litigation in respect of a right which is common and is agitated in common with others. (Para 21)

In the present case the High Court had held that the previous writ petition was not a bona fide public interest litigation as the petitioner in that case had been put up by a disgruntled person. Therefore, the subsequent public interest writ petition before the High Court would not be barred by Section 11. The possibility of litigation to foreclose any further enquiry into a matter in which an enquiry is necessary in the interest of public cannot be ruled out. (Para 22)

Civil Procedure Code, 1908 — Section 11 Explanation IV — Constructive res judicata — Scope — Held, applicable to writ petitions also — Constitution of India, Articles 226 and 32

Held :

An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. Where a matter has been constructive in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. Therefore, the judgment of the High Court in the earlier writ petition would operate as res judicata even where one of the grounds taken in the subsequent writ petition before the High Court was absent in the earlier petition. (Para 20)

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(1986) 1 SCC

Municipalities — Acquisition and user of land within municipal area — Public purpose — Plot acquired for bus depot — Substantial portion of the plot utilised for bus depot and on a small portion buildings constructed for commercial purposes to augment income of the Municipal Corporation which would be used for construction of staff quarters — Held, plot substantially used for the purpose for which it had been acquired — Administrative Law — Natural justice — Mala fides — Bombay Municipal Corporation Act, Section 87 (Para 25)

Held :

Public interest law activities at times champion one public interest which clashes with another public interest thus benefiting one segment of public at another's expense. The purpose for which the plot was earmarked remains intact, that is, for the construction of bus depot. The other public interest sought to be achieved by the construction of the two buildings in addition to the bus depot is equally important. (Para 26)

Administrative Law — Natural justice — Mala fides — Specific plea must be taken against concerned officers showing that they acted with ulterior or improper motive — In absence of such a plea, on facts held, allegations of mala fides liable to be rejected (Para 27)

Administrative Law — Natural justice — Mala fides — Legal mala fides — Transaction alleged to be for the purpose other than the statutory purpose, intended to make financial gain — Land situate in a commercial zone acquired by municipal corporation for bus depot — Substantial portion of the land used for bus depot and on a small portion buildings constructed for commercial offices — Income derived from commercial buildings to be utilised for construction of staff quarters — Held, allegations of legal mala fides not made out — Municipalities — Bombay Municipal Corporation Act, Sections 61(k) and (l) and 87

Held :

Mere fact that the Corporation was to make gain out of the commercial constructions did not mean that that was the only purpose which was in view. The purpose was the best utilisation of the available space. If in a commercial zone the Corporation was able to make available accommodation for commercial purposes, such a venture can be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act. (Para 32)

Administrative Law — Natural justice — Mala fides — Tender — Advertisement inviting offers published in newspapers — Notices also forwarded to well known contractors — Tender forms purchased by several contractors — But only two of them submitting tender — Highest tenderer given the contract — In the circumstances held, transaction fair and allegation that contract given in a secretive manner on an inadequate consideration unfounded — Government Contracts (Para 23)

Town Planning — Development Control Rules for Greater Bombay, 1967 — Rule 3(a) — Change of user of the sanctioned plan — Meaning of 'Change' — Plot in a commercial zone acquired by municipal corporation for bus depot

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but used for bus depot combined with a commercial purpose — Held, such user does not constitute 'change' — Hence development plan need not be modified for such user — Maharashtra Regional and Town Planning Act, 1966, Sections 43, 44, 59, 92 and 158

Words and Phrases — 'Change' — Meaning of

The proviso to Building Regulation 3 made under the final Town Planning Scheme [for Andheri (Bombay) No. 1] required that the change of user of the sanctioned plan could be made only after the modification of the development plan. Rule 3(b) of the Development Control Rules for the Greater Bombay provides that no building or premises shall be changed or converted to a use not in conformity with the provisions of the Rules. The proviso to Rule 3(a)(i) of the said Rules provides that in respect of areas included in a finally sanctioned Town Planning Scheme, the scheme regulations shall prevail if there is a conflict between the requirements of these rules and of the Scheme regulations. The respondents contended that the proviso to Building Regulation 3 prevailed over the Development Control Rules and that in absence of modification in development plan change of user of the sanctioned development plan could not be permitted.

Held :

The general meaning of the word 'change' is "to make or become different, to transform or convert". If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary. But in the instant case the user of the plot has not been changed. It has been used for a bus depot combined with a commercial use to augment the income of the Corporation for public purpose. In this view of the connotation of the word 'change' the proviso to Building Regulation 3 has no application to the present case. (Para 33)

Collins English Dictionary and Oxford Dictionary, relied on

Appeals allowed

R-M/7170/C

Advocates who appeared in this case :

Parimal Shroff, Arun K. Sinha, K.K. Singhvi, P.H. Parekh, M.K. Nesarı and Ms Indu Malhotra, Advocates, for the Appellants ;

V.N. Ganpule, S. Naphade and Mrs Urmila Sirur, Advocates, for the Respondents.

The Judgment of the Court was delivered by

R.B. MISRA, J.—The present connected appeals and the special leave petition to appeal are sequel to a public interest litigation and are directed against the judgment of the High Court of Bombay dated November 14, 1983 allowing a petition under Article 226 of the Constitution.

2. Public interest litigation is a comparatively recent concept of litigation but it occupies an important status in the new regime of public law in different legal systems. By its very nature the concept of public interest litigation is radically different from that of traditional private litigation. Ordinary traditional litigation is essentially of an

adversary character where there is a dispute between the two litigating parties, one making the claim or seeking relief against the other and the other opposing such claim or resisting such relief. While public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another, as happens in the case of ordinary litigation, it is intended to prosecute and vindicate public interest which demands that violation of constitutional or legal rights of a large number of people, who are poor, ignorant or socially and economically in disadvantaged position, should not go unnoticed, unredressed for that would be destructive of the rule of law. Rule of law does not mean protection to a fortunate few or that it should be allowed to be prosecuted by vested interests for protecting and upholding the status quo. The poor too have a civil and political right. Rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress may not hold good in the present setting. Therefore, new strategy has to be evolved so that justice becomes easily available to the lowly and the lost. Law is not a closed shop. Even under the old system it was permissible for the next friend to move the court on behalf of a minor or a person under disability or a person under detention or in restraint. Public interest litigation seeks to further relax the rule of locus standi. This Court in *S.P. Gupta v. Union of India*¹ dealing with the question of public interest litigation observed : (SCC p. 210, para 17)

It may therefore now be taken as well established that where a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

The present is a typical case of public interest litigation and arises in the following circumstances.

3. The development plan for Bombay was sanctioned by the State Government on August 8, 1966 and the verified Andheri Town

1. (1982) 2 SCR 365 : 1981 Supp SCC 87

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Planning Scheme framed under the Maharashtra Regional Town Planning Act, came into force, after the repeal of the Bombay Town Planning Act, with effect from January 7, 1967 and the Scheme was finally sanctioned on June 11, 1970. Under the development plan final plot No. 14 was reserved for a bus depot of the Bombay Electricity Supply and Transport Undertaking (hereinafter referred to as the 'BEST'), owned and run by the Bombay Municipal Corporation (hereinafter referred to as 'BMC').

4. The said plot originally belonged to one Amarsi and after a prolonged litigation the said land admeasuring 4657.10 sq. m. was acquired under the provisions of the Land Acquisition Act, 1894 and the BMC through the BEST had to pay a sum of Rs 35,00,000 as compensation pursuant to the award given by an arbitrator appointed by consent of the parties and the BEST took possession of the same on February 18, 1978.

5. It appears that the General Manager of the BEST Undertaking laid before the BEST Committee a proposal in his letter dated August 4, 1981. In his opinion if the BEST provided only a bus depot on the said plot the total investment would be Rs 45,00,000 inclusive of the cost of the land and the return from the investment would be nothing except the rent from the canteen vendor. The General Manager, therefore, proposed to the said committee that if an additional investment of Rs 50,00,000 on the construction of two buildings was made, the BEST would get a return to the tune of Rs 8,50,000 per annum. He referred to the two buildings as 'A' and 'B' on the plan which was annexed with his letter. The 'A' building was to have five floors with the ground floor on stilts and building 'B' was to have a ground and two upper floors with a mezzanine floor and the first floor. Building 'B' was also partly to be on stilts to provide for car parking. The calculation made by the General Manager was on the footing that a carpet area of 22,500 sq. ft. could be spared after meeting the needs of the BEST bus depot and that space could be let out for offices and show rooms etc. from which the BEST could expect an overall minimum rent of Rs 3 per sq. ft. exclusive of taxes resulting in a net profit of Rs 8,50,000 per annum.

6. It, however, appears that the BEST Committee referred back the proposal of August 4, 1981 to the General Manager and he, in the light of discussions with the members of the BEST Committee, put up two alternative proposals vide his letter dated September 17, 1981. The salient features of the first proposal were that offers from builders were to be invited by public advertisements for construction of the entire complex as per BEST plans and specifications by the builder at his own cost which was estimated at Rs 60 lacs. Under

the said proposal the builder was to make his own arrangements for finance and materials including steel, cement etc. The proposal further indicated that as the builder's maximum investment would amount to Rs 159 lacs he may in lieu thereof be given a right to dispose of the property to the users of his own choice. Under that proposal the builder was to make an annual payment to the BEST to cover repairs, maintenance and other costs. The builder making the highest payment was to be selected and the premium was put at the rate of Rs 200 to Rs 250 per sq. ft. of the available FSI. On that basis it was estimated that the floor space available being 39,592 sq. ft., at the rate of Rs 200 to Rs 250 per sq. ft. a sum between Rs 79 lacs to Rs 99 lacs could be received by BEST, in addition to making a full-fledged bus depot free of cost. The General Manager in the said letter, however, also pointed out the drawbacks of his proposal and therefore an alternative suggestion was also made by him whereunder the BEST may invite offers directly from the prospective tenants for a period of 30 years at a time and after the expiry of 30 years the tenants were to have an option of renewal for a further period of 30 years but at a revised rate to be fixed by the BEST taking into consideration the prevailing market price. Under the alternative proposal a premium of Rs 99 lacs was to be received directly from the tenants and after deducting the cost of the whole complex, which was expected to be Rs 60 lacs the BEST would get a net amount of Rs 39 lacs in addition to the revenue of Rs 8.46 lacs per annum by way of rent or compensation from the tenants.

7. The final proposal which, however, emerged as a result of discussion with the BEST Committee was the one contained in the letter of the General Manager to the BEST Committee dated January 14, 1982. Under this proposal the builder was to pay to the BEST non-refundable premium at the rate of Rs 250 per sq. ft. of FSI allowed to be used. The builder was to construct at his cost two buildings including the bus depot, yard concreting, lighting etc. and hand them over free of cost to the BEST within two years after entering into the contract and the plans and specifications were to be given by the BEST. The builder was to recommend tenants for 23,500 sq. ft. carpet area and the BEST was to grant lease to the tenants nominated by the builder subject to approval by the General Manager at the rate of Re 1 per sq. ft. of the carpet area. The lease was renewable for a further period of 30 years and that the rent was to be at the rate of Rs 2 per sq. ft. The user was to be such as was allowed under the development control rules. The builder was to pay the premium in two instalments, the first instalment of 50 per cent before signing the agreement and the remaining 50 per cent within 18 months after the first payment but before the completion of the project.

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8. The effect of this proposal was that the BEST would on the one hand get a cash amount of Rs 99 lacs in the form of non-refundable premium and on the other hand would not be required to make any capital expenditure for the construction of the project. A net income of Rs 2.82 lacs per year for 30 years amounting to Rs 84.60 lacs, and for the next 30 years at the rate of Rs 5.64 lacs per year amounting to Rs 169.20 lacs would be earned by the BEST. Under the said project the BMC or the BEST would gain in the first 60 years' period about Rs 412 lacs as against Rs 159 lacs and would not be required to supply any cement for the project. This proposal was approved by the BEST Committee by its resolution dated January 18, 1982.

9. The follow up proceedings started thereafter and an advertisement came to be published in the Times of India and various other newspapers on February 10, 1982 inviting offers from the interested parties to develop the BEST property on certain terms and conditions contained in a document which could be obtained from the Engineer-in-Charge (Civil) of the BEST. In addition to the said advertisement in the newspapers, notices were also forwarded to 22 well-known builders out of whom 12 builders purchased the tender forms on payment of Rs 1000 each.

10. The parties hereinafter are referred to in accordance with their position in CA 2311 of 1984.

11. Pursuant to the advertisement and the said notices two tenders were received, one was sent by M/s Forward Construction Co., respondent 7, a partnership firm, and the other by M/s Deep Construction. As the tender of Forward Construction Co. was higher than that of M/s Deep Construction it was accepted by the BEST Committee on March 31, 1982. The BEST Committee also recorded its approval to General Manager entering into the contract with the highest bidder for development of the BEST's property at Andheri. The approval further stated that the amount so earned would be used for constructing staff quarters. The possession of the plot was handed over to Forward Construction Company for the purpose of putting up the construction for and on behalf of the BEST on April 18, 1982.

12. It appears that soon after one Subhash Vasant Thakkar on April 20, 1982 filed a petition in his capacity as a rate-payer in the High Court of Judicature at Bombay under Article 226 of the Constitution, being Writ Petition 921 of 1982. He challenged the right of the BEST to use the land for a purpose different from the one for which it had been reserved and designated under the development plan as well as the town planning scheme and that it had no right to

use it for commercial purpose. He also challenged the right of the BEST to enter into a contract with the builder. The petition was dismissed by a learned single Judge on May 28, 1982 after having heard all parties concerned and after giving opportunity to file replies. The learned Judge found that the substantial portion of the acquired plot was being utilised for a purpose for which it was acquired and the commercial use to which the small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large. The learned Judge also rejected the contention that the value charged by the BEST for allowing use of its property was grossly inadequate and that no sufficient publicity was given before inviting offers. The court after having rejected the various pleas taken by the petitioner in the case also observed that the petitioner was not an independent-minded citizen solely inspired by the laudable motive of protecting public interest but the allegations in the petition indicated that he had been set up by a disgruntled builder who purchased the tender document but did not give an offer. The matter was taken up in appeal but the division bench dismissed the same after hearing all the parties.

13. After the dismissal of the appeal the present respondents 1 to 6 in CA 2311 filed a similar petition under Article 226 of the Constitution in the Bombay High Court which gives rise to the present appeals and the special leave petition seeking almost the same relief as was claimed in the earlier petition filed by Thakkar. The learned single Judge summarily dismissed the writ petition by his order dated November 23, 1982.

14. The respondents 1 to 6 took up the matter in appeal. The division bench admitted the appeal and disposed of the same finally on the same day setting aside the order of the learned single Judge. It admitted the writ petition and transferred the same to be finally disposed of by a division bench. The division bench eventually allowed the petition and issued a writ of mandamus directing appellants 1 to 4 in CA 2311, their officers, subordinates, servants and agents not to use plot No. 14 in the Town Planning Scheme, Andheri No. 1 (2nd Variation) reserved for BEST bus depot for commercial purpose or for any purpose other than the purpose for which the said plot of land was reserved. The court, however, clarified that its decision did not prevent the planning authority, that is, the BMC, from taking such steps as it may be advised to have the plan modified in accordance with Section 37 of the said Act.

15. The appellants feeling aggrieved by the judgment of the High Court filed a detailed review petition mainly on the ground that the respondents 1 to 6 had not taken any plea based on Regulation 3 of

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the Building Regulations and it was only during the course of arguments that this plea was advanced before the court and certain papers were filed before the court. The appellants had no opportunity to produce documents in rebuttal and it was only when the decision was given by the court that the appellants have been able to trace and collect a number of documents, which according to them have great bearing on the interpretation of the said building regulations contained in the Town Planning Scheme, Andheri No. 1 (2nd Variation) finally sanctioned by the State Government on July 17, 1976. They filed the following documents along with the review petition :

(1) Town Planning Scheme, Andheri No. I (Final) which came into force on November 15, 1919 vide Government notification No. GP-8388-A dated October 7, 1919 in the Bombay Government Gazette Part I No. 2404 dated October 9, 1919.

(2) Notification No. TPS-2963-30714-R dated October 29, 1963 issued by the State Government sanctioning the T.P. Scheme, Andheri No. I (1st Variation) (Final) with effect from January 1, 1964.

(3) The T.P. Scheme, Andheri I (1st Variation) containing Building Regulations which inter alia state that no plot within the area of the scheme shall be permitted to be used for any purpose other than residential.

(4) Resolution of the Bombay Municipal Corporation No. 539 dated August 24, 1967 declaring their intention under Section 92 read with Section 59(a) of the MRTP Act, 1966 to make 2nd Variation Town Planning Scheme. Andheri No. I with a view :

- (a) to rectify the discrepancies in the areas of the plots, if any, to regularise the boundaries wherever necessary, and to make other consequential changes in the redistribution of Valuation Statement :
- (b) to change some of the residential and/or shopping plots into commercial plots as per final Development Plan ;
- (c) to make such other variation as deemed necessary, supplementary to, and consequential to the variations stated above.

(5) Notification dated September 6, 1968 issued by the Municipal Commissioner for Greater Bombay informing the public that the Draft Variation Scheme for Andheri Town prepared and approved by the Corporation for publication under Resolution No. 399 of August 19, 1968 was open for inspection and any person who had been affected by the draft variation scheme should communicate in writing to the Executive Engineer, Town Planning, any objection or suggestion within 30 days from the publication of the said notification.

(6) Government notification in Urban Development, Public Health and Housing Department TPS 2969/11752 dated May 30, 1970 sanctioning the Draft Scheme (2nd Variation).

(7) Notification dated May 15, 1973 issued by Shri K.S. Keswani, Arbitrator, announcing that he had done all that was required of him regarding Town Planning Scheme, Andheri No. I (2nd Variation) (Final) under Section 72(3) of the MRTP Act, 1966 and the rules framed under the Bombay Town Planning Act, 1954 and had drawn up the Final Scheme as required under Section 72(3)(xviii) of the said Act.

(8) Decision given by the Tribunal of Appeals presided by Shri G.H. Guttal dated April 7, 1975 regarding Town Planning Scheme, Andheri No. I (2nd Variation) (Final) wherein paragraph 16 deals with Appeal 3 relating to Final Plot No. 14.

(9) Notice dated January 16, 1976 issued by Shri K.S. Keswani, Arbitrator, announcing that he had drawn up the Final Scheme. Andheri No. I (2nd Variation) as required under Section 72(3)(xviii) read with Section 82(2) of the MRTP Act, 1966.

(10) Final Scheme drawn by Shri K.S. Keswani, Arbitrator on January 16, 1976 showing that the scheme involved 27 plots which had fallen in Commercial Zone under the Final Development Plan and the Original Plot Nos. 1 to 27 remained as Final Plot Nos. 1 to 27.

(11) Notification dated July 17, 1976 issued by the Government of Maharashtra sanctioning Town Planning Scheme, Andheri No. I (2nd Variation) (Final) published in the Maharashtra Government Gazette Extraordinary, dated July 17, 1976.

These documents according to the appellants proved that :

- (a) The Town Planning Scheme, Andheri No. I (Final) known as the Principal Scheme, came into force on November 15, 1919.
- (b) The Bombay Municipal Corporation declared its intention to vary that scheme on November 18, 1957 to enable the plot holders in the scheme area to effect development on par with the area outside the scheme wherein the built up area up to one-third of the plot and the structures for ground and two upper floors were permissible and also to provide underground sewers and storm water drains.
- (c) The Town Planning Scheme, Andheri No. I (1st Variation) (Final) was sanctioned by the Government on October 29, 1963 with effect from January 1, 1964. Under the Building Regulations made under the said scheme. Regulation 6 stated

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that no plot within the area of the scheme shall be permitted to be used for any purpose other than residential, provided that professional offices of doctors, lawyers, engineers and the like as also buildings required for educational, recreational, religious or cultural purposes, community centres, dispensaries, hospitals and any other buildings the use of which is, in the opinion of the local authority, not likely to affect detrimentally the residential character of the locality, may be permitted. In short, all the plots in the area of the scheme were permitted to be used for residential purposes.

- (d) Final Development Plan of 'K' Ward which includes Andheri came into force with effect from August 8, 1966 and the Development Control Rules for the entire Greater Bombay came into force from February 9, 1967. Under the Final Development Plan the plots which had been included in Town Planning Scheme, Andheri No. I (1st Variation) (Final) were included in 'Commercial Zone'.

In short, the entire purpose of varying the Town Planning Scheme, Andheri No. I was to bring the scheme in conformity with the Development Plan.

16. The High Court, however, dismissed the review petition on December 22, 1983 by the following order :

Heard Mr Singhvi. We have interpreted Regulation 3 and the proviso in its plain terms. The number of documents now produced do not affect the construction which we have placed on Regulation 3 and the proviso. Review petition rejected.

17. All the contesting parties have now come up in appeal against the judgment of the High Court dated November 14, 1983 to the extent it went against them. The result is that all the questions which were before the High Court are again up for consideration by this Court.

18. To start with, the respondents 1 to 6 had taken a plea that the Municipal Commissioner had not obtained the approval of the Bombay Municipal Corporation under Rule 4(a)(i) of the Development Control Rules for change of user. The counsel for the BMC, however, informed the court that he had already sought the sanction of the Bombay Municipal Corporation and the proposal would soon come up before the Corporation for discussion and on that ground he sought an adjournment of the case to enable the Corporation to approve the said proposal. On January 6, 1983 the BMC by its resolution accorded sanction under Rule 4(a)(i) of the Development Control Rules for the change of present user of BEST bus depot to a combined

user of BEST bus depot with commercial offices proposed by the Municipal Commissioner. The court thereafter allowed respondents 1 to 6 to amend their writ petition as the plea taken by them had lost its force after the sanction.

19. The second question for consideration is whether the present writ petition is barred by *res judicata*. This plea has been negated by the High Court for two reasons : (1) that in the earlier writ petition the validity of the permission granted under Rule 4(a)(i) of the Development Control Rules was not in issue ; and (2) that the earlier writ petition filed by Shri Thakkar was not a *bona fide* one inasmuch as he was put up by some disgruntled builder, namely, M/s Western Builders.

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as *res judicata* as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

21. The second reason given by the High Court, however, holds good. Explanation VI to Section 11 provides :

Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section be deemed to claim under the persons so litigating.

But it is only when the conditions of Explanation VI are satisfied that a decision in the litigation will bind all persons interested in the right litigated and the onus of proving the want of *bona fides* in respect of the previous litigation is on the party seeking to avoid the decision.

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The words "public right" have been added in Explanation VI in view of the new Section 91 CPC and to prevent multiplicity of litigation in respect of public right. In view of Explanation VI it cannot be disputed that Section 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation not by way of a private grievance. It has to be a bona fide litigation in respect of a right which is common and is agitated in common with others.

22. The High Court in the earlier writ petition had recorded a finding that it was not a bona fide litigation and that Shri Thakkar, the petitioner in that case, had been put up by M/s Western Builders. This finding excludes the application of Section 11 CPC in the present case. The possibility of litigation to foreclose any further enquiry into a matter in which an enquiry is necessary in the interest of public cannot be overruled (*sic* overlooked). In view of the finding of the High Court that the previous writ petition was not a bona fide one, the present writ petition would not be barred by Section 11 of the CPC and the High Court was justified in so holding but not because of the first reason but because of the second reason.

23. This leads us to the third point that a valuable public property was being disposed of at a gross undervalue in a highly secretive manner only to oblige respondent 7. This plea in our opinion was rightly negated by the High Court. Consequent upon the resolution of January 18, 1982 approving the proposal of the General Manager, an advertisement came to be published in the Times of India and various other newspapers on February 10, 1982 inviting offers from the interested parties to develop BEST's property on certain terms and conditions contained in a document which could be obtained from the Engineer-in-Chief (Civil) in the BEST. In addition to the said advertisement in the newspapers notices were also forwarded to 22 well-known builders out of whom 12 builders purchased the tender forms on payment of Rs 1000 each. In view of these circumstances it cannot be said that the whole thing was done in a secretive manner.

24. Pursuant to the advertisement and the said notices two tenders were received out of which one was sent by respondent 7 which is a partnership firm and another by Deep Construction. The tender of respondent 7 being higher than that of Deep Construction, was accepted by the BEST Committee on March 31, 1982. In the facts and circumstances of this case as established, it cannot be said that the property of the Corporation has been disposed of for a wholly inadequate consideration.

25. The fourth point raised is that the plot No. 14 acquired for a public purpose of constructing a bus station was being used for a

commercial purpose which was not permissible. This plea had been rejected by the High Court holding that a very substantial portion of the acquired plot was being utilised for the purpose for which it was acquired and the commercial use to which a small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large without spending any further amount on the development. It cannot be said that the plot has been used for a different purpose from the one for which it had been acquired. All that can be said is that a part of the plot is being used for constructing two buildings which would augment the income of BMC that could be utilised for the public purpose. The plot is being substantially used for the purpose for which it had been acquired. The additional use of the property will not make the use of the property for altogether a different purpose.

26. Public interest law activities at times champion one public interest which clashes with another public interest thus benefiting one segment of public at another's expense. As disclosed in the earlier part of the judgment, the General Manager had sent up a proposal whereunder a part of plot No. 14 was to be used for construction of two buildings that will augment the income of the Corporation which could be used for the purpose of construction of staff quarters. The purpose for which the plot was earmarked remains intact, that is, for the construction of bus depot. In our opinion the other public interest sought to be achieved by the construction of the two buildings in addition to the bus depot is equally important.

27. This leads us to the question of mala fides of the officers of the Corporation in accepting the tender of M/s Forward Construction. This plea was based on various circumstances which had been taken into consideration by the High Court and repelled. Indeed, no specific plea had been taken against any officer of the Corporation to show that the officers were acting with any ulterior or improper motive. All the same, the High Court did consider this plea and rejected the same for cogent reasons with which we agree and it is not necessary to repeat them here.

28. As a second limb to the plea of mala fides it was contended that even assuming that no mental guilt on the part of the officers of the Corporation is proved, the transaction suffered from legal mala fides or mala fides in law inasmuch as the transaction was outside the Bombay Corporation Act as it was intended to make financial gain.

29. The avowed function of the Corporation is the improvement of Greater Bombay. Section 61 of the Municipal Corporation Act enumerates the obligatory and discretionary duties of the Corporation. Section 61(1) refers to the improvement of Greater Bombay.

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Section 63(λ) authorises the Corporation to take any measures to promote public safety, health, convenience. The plot in question admittedly lies in a commercial zone and if any facilities are given to the people of that locality providing for commercial offices those facilities would go towards the improvement of Bombay. It cannot, therefore, be said that the transaction was outside the Bombay Corporation Act.

30. The resolution of the BEST Committee dated January 18, 1982 approving the proposal of the General Manager dated January 14, 1982 clearly provided that the amount of non-refundable premium payable by the builder at the rate of Rs 250 per sq. ft. of FSI would be utilised for the construction of the undertaking's quarters and tenements under hire-purchase scheme. The BEST had, therefore, clearly earmarked the non-refundable premium for the purpose of construction of quarters and tenements under the hire-purchase scheme.

31. Section 87 of the Bombay Municipal Corporation Act provides that the Corporation shall for the purposes of this Act have powers to acquire and hold movable and immovable property whether within or without the limits of Greater Bombay. As the property is being utilised for augmentation of the revenues of the Corporation it is sought to be contended that it is not for the purpose of the Act.

32. The mere fact that the Corporation was to make a gain of the non-refundable premium did not mean that that was the only purpose which was in view. The purpose obviously was the best utilisation of the available space. If in a commercial zone the Corporation was able to make available accommodation for commercial purposes we do not see why such a venture cannot be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act.

33. This leads us to the last but not the least in importance the plea based on Building Regulation 3. In order to appreciate the contention it will be proper to read the regulation :

The user of the following final plots will be as under, as per the sanctioned development plan :

<i>Final Plot No.</i>	<i>User</i>
10	Public Wall
12 Pert	Parking lot
14	BEST Bus Depot

Provided that the above users may be changed by the Local Authority after modification of the Development Plan.

It was this plea which prevailed with the High Court and the writ petition was allowed only on this score. The precise contention of the counsel for the respondents was that Building Regulation 3 will override the Development Control Rules for Greater Bombay. Rule 3 of the Development Control Rules for Greater Bombay reads :

3(a)(i) All development work shall conform to the respective provisions made under these Rules. If there is a conflict between the requirement of these rules and the requirements of bye-laws in force the requirements of these rules shall prevail :

Provided however that in respect of areas included in a finally sanctioned Town Planning Scheme, the scheme regulations shall prevail if there is a conflict between the requirements of these rules and of the Scheme regulations.

(ii) The development work when completed shall not be used for any purpose except for the sanctioned use or such use as can be permitted under these rules.

(b) Change of use : No building or premises shall be changed or converted to a use not in conformity with the provisions of these rules.

If the contention of the respondents that proviso to Building Regulation 3 overrides the Development Control Rules is accepted then the user of the plot as per sanctioned development plan can be changed by the local authority after modification of the development plan and as in the instant case there has been no modification of the development plan the change of user cannot be permitted. This is the crucial point on which the writ petition has been allowed. The other pleas taken by the respondents, as stated above, had been negatived by the High Court. What the proviso to Building Regulation 3 requires is that the change of user of the sanctioned plan can be made only after the modification of the development plan. The key word in this regulation is 'change'. What does the word 'change' mean? Collins English Dictionary gives the following meaning to the word 'change' :

1. to make or become different, alter, 2. to replace with or exchange for another, 3. to transform or convert, 4. to give or receive something in return, interchange, 5. to give or receive money in exchange for the equivalent sum in small denomination or different currency, 6. to remove or replace the coverings of, 7. to put on other clothes, 8. to pass from one phase to the following one, 9. to alight from and board another, 10. a variation, deviation or modification, 11. the substitution of one thing for

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another, exchange, 12. anything that is or may be substituted for something else, 13. a different or fresh set.

The meaning of the word 'change' in the Oxford Dictionary reads :

1. take another instead of, 2. resign, get rid of, 3 give or get money change for, 4. put on different clothes, 5. go from one to another, 6. pass to different owner, 7. make or become different, 8. take new position in argument, 9. adopt new plan or opinion.

So, the general meaning of the word 'change' in the two dictionaries is "to make or become different, to transform or convert". If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary. But in the instant case the user of the plot has not been changed. It has been used for a bus depot combined with a commercial use to augment the income of the Corporation for public purpose. In this view of the connotation of the word 'change' the proviso has no application to the present case and the High Court in our opinion was not quite justified in allowing the writ petition only on the basis of the proviso to Building Regulation 3.

34. It may further be pointed out even at the cost of repetition that this plea had not been taken in the original writ petition nor in the amended writ petition, and had been taken for the first time in the course of argument. The appellants had no opportunity to produce documents in rebuttal and it was only when the judgment was pronounced that the appellants could lay their hands on certain notifications and certain other documents to show that that was a minor adjustment and could be rectified. Therefore, the appellants filed a review petition along with those documents which have been enumerated in the earlier part of the judgment. The court described those papers as irrelevant for the purpose of construction of the proviso to Building Regulation 3. But in our opinion those documents would go a long way to solve the problem.

35. For the foregoing discussion, the appeals must succeed. They are accordingly allowed, the judgment and order dated November 14, 1983 of the division bench of the High Court are set aside, and the judgment and order dated November 23, 1982 of the learned single Judge of the High Court dismissing the writ petition are restored. The special leave petition filed by Prabhat Mandal and others is dismissed. In the circumstances of the case, however, the parties shall bear their own costs.

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For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by the CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility.

18. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as: (i) *ONGC-II*¹ dated 11-10-1991, (ii) *ONGC-III*² dated 7-1-1994, and (iii) *ONGC-IV*³ dated 20-7-2007.

19. In the circumstances, we hereby recall the following orders reported in:

- (i) *ONGC-II*¹ dated 11-10-1991,
- (ii) *ONGC-III*² dated 7-1-1994, and
- (iii) *ONGC-IV*³ dated 20-7-2007.

20. For the aforesaid reasons, IA No. 4 filed by the assessee in Civil Appeal No. 1903 of 2008 is dismissed.

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

M. NAGABHUSHANA

Appellant;

Versus

STATE OF KARNATAKA AND OTHERS

Respondents.

Civil Appeal No. 1215 of 2011[†], decided on February 2, 2011

A. Constitution of India — Art. 136 — Abuse of process of court/law — Exemplary costs of ₹10 lakhs imposed as a deterrent — Appellant rearguing its case already decided by Supreme Court in *AIMO case*, (2006) 4 SCC 683, before High Court and then questioning those judgments before Supreme Court, is nothing but abuse of process of court — Such litigative adventure of appellant is contrary to principles of *res judicata* as well as principles of constructive *res judicata* and principles analogous thereto — Main purpose of filing this appeal was to hold up, on one or other pretext, implementation of earlier decision of Supreme Court — Hence appeal dismissed with costs of ₹10 lakhs (Paras 23 to 25, 18, 11 and 37)

State of Karnataka v. All India Manufacturers Organisation, (2006) 4 SCC 683; *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573, *relied on*
The Supreme Court Practice, 1995, (p. 344), *relied on*

[†] Arising out of SLP (C) No. 26391 of 2010. From the Judgment and Order dated 23-7-2010 of the High Court of Karnataka at Bangalore in WA No. 1192 of 2007

B. Supreme Court Rules, 1966 — Or. 41 Rr. 1 & 3 — Costs — Recovery, in default — Mode of — Appellant reagitating an already decided case by Supreme Court — On facts held, appellant abused process of court — Costs of ₹10 lakhs imposed — Appellant directed to pay costs in favour of High Court Legal Services Authority — In default, appropriate authority would initiate proceedings against the appellant on complaint filed by High Court Legal Services Authority — Costs to be recovered as arrears of land revenue — Practice and Procedure — Costs — Civil Procedure Code, 1908, Ss. 35 and 35-A (Para 39)

C. Land Acquisition and Requisition — Karnataka Industrial Areas Development Act, 1966 (18 of 1966) — Ss. 28(4) and 28(5) — Acquisition of land under — Inapplicability of S. 11-A, LA Act, 1894 — Appellant contending that acquisition was vitiated as award was not passed within time stipulated under S. 11-A, LA Act — Held, on publication of notification under S. 28(4), land vests in State Government free from all encumbrance — Such vesting takes place by operation of law — S. 11-A, LA Act is not applicable to proceedings under KIAD Act, 1966 — Land Acquisition Act, 1894, S. 11-A (Paras 26, 29 to 31 and 35)

Munithimmaiah v. State of Karnataka, (2002) 4 SCC 326; *Offshore Holdings (P) Ltd. v. Bangalore Development Authority*, (2011) 3 SCC 139 : (2011) 1 SCC (Civ) 662; *Girnar Traders (3) v. State of Maharashtra*, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578, applied
Pratap v. State of Rajasthan, (1996) 3 SCC 1, followed
Mariyappa v. State of Karnataka, (1998) 3 SCC 276, distinguished

D. Civil Procedure Code, 1908 — S. 11 — Principles of res judicata — Foundation of — History of doctrine, traced — Held, it is in the interest of State that there should be an end to litigation — No one ought to be vexed twice in a litigation if it appears to court that it is for one and the same cause — Judgment of a proper trial by a competent court has to be treated as final and conclusive determination of issues involved in matter — In absence of such principles great oppression might be caused in pretext of law and there would be no end to litigation — Rich and malicious litigant will succeed in vexing his opponent by repetitive suits and actions resulting in weaker party to relinquish his rights — To prevent such anarchy doctrine of res judicata has been evolved — Maxims — *Interest reipublicae ut sit finis litium* — *Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* — Rule of Law — Res judicata — Role of doctrine

E. Civil Procedure Code, 1908 — S. 11 — Res judicata — Plea of — Nature of — Held, it is not technical doctrine — It is a fundamental principle sustaining the rule of law ensuring finality of litigation — It prevents the approaching of courts for reagitating same issues which have already been finally decided between parties — Thus promoting honest and fair administration of justice — Rule of Law — Res judicata — Role of doctrine

Dismissing the appeal with costs, the Supreme Court

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Held :

The principles of res judicata are of universal application as they are based on two age-old principles, namely, *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised systems of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest. (Para 12)

That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. (Para 13)

Lachhmi v. Bhulli, ILR (1927) 8 Lah 384, referred to

F. Civil Procedure Code, 1908 — S. 11 — Res judicata — Approach in applying doctrine by courts — Held, while applying the principles of res judicata the court should not be hampered by any technical rules of interpretation (Para 17)

Sheoparsan Singh v. Ramnandan Singh, (1915-16) 43 IA 91 : ILR (1916) 43 Cal 694 (PC), relied on

G. Land Acquisition and Requisition — Karnataka Industrial Areas Development Act, 1966 (18 of 1966) — Ss. 28(4) and 28(5) — Land Acquisition Act, 1894 — Ss. 4, 5 and 11 — Compared (Paras 34 and 30)

H. Constitution of India — Arts. 226 and 32 — Writ proceedings — Constructive res judicata — Applicability — Reiterated, principles of res judicata are based on considerations of public policy — Essentials of public policy is that judgment of a competent court should be final and no person should be made to face same litigation twice — Res judicata is to prevent abuse of process of court — Adjudication of competent court is final and conclusive not only with regard to actual litigation but also with regard to all incidental or connected litigation arising out thereof — Hence principles of constructive res judicata are applicable to writ proceedings — Civil Procedure Code, 1908, S. 11 (Paras 19 to 22)

State of Karnataka v. All India Manufacturers Organisation, (2006) 4 SCC 683; *Devilal Modi v. STO*, AIR 1965 SC 1150; *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348; *State of U.P. v. Nawab Hussain*, (1977) 2 SCC 806 : 1977 SCC (L&S) 362, relied on

Greenhalgh v. Mallard, (1947) 2 All ER 255 (CA), held, approved

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Daryao v. State of U.P., AIR 1961 SC 1457 : (1962) 1 SCR 574, cited

- I. Constitution of India — Arts. 136 and 226 — New plea —
 a Impermissibility in view of principles of constructive res judicata —
 Appellant questioning land acquisition proceedings — Issues involved in the
 matter had already been decided by Supreme Court — Appellant raising a
 new plea that he was not aware that his lands were outside the purview of
 Framework Agreement (FWA) — Held, appellant never raised issue that his
 lands were outside purview of FWA in earlier writ proceedings — No
 b sufficient explanation was offered for not raising that issue in earlier writ
 petitions — In view of applicability of principles of constructive res
 judicata, appellant not permitted to raise his new plea — Civil Procedure
 Code, 1908, S. 11 (Para 16)

G-D/47275/CV

Advocates who appeared in this case :

- c Anoop G. Chaudhari and Ms June Chaudhari, Senior Advocates (Raghavendra S.
 Srivatsa and Venkat Subramaniam, Advocates) for the Appellant;
 Dushyant Dave and Dr. Abhishek M. Singhvi, Senior Advocates (Anant Raman, R.V.S.
 Nair, Shanth Kr. V. Mahale and Ms Anitha Shenoy, Advocates) for the Respondents.

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| d | 2. (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578, <i>Girnar Traders (3) v. State of Maharashtra</i> | 421d-e |
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| | 14. (1915-16) 43 IA 91 : ILR (1916) 43 Cal 694 (PC), <i>Sheoparsan Singh v. Rammandan Singh</i> | 417g-h |

- g The Judgment of the Court was delivered by

A.K. GANGULY, J.— Leave granted. This appeal is directed against the judgment and order dated 23-7-2010 passed by the Division Bench of the High Court of Karnataka whereby the learned Judges dismissed WA No. 1192 of 2007 which was filed impugning an acquisition proceeding to the State of Karnataka. It may also be noted that while dismissing the appeal, the
 h Division Bench affirmed the judgment of the learned Single Judge dated 28-5-2007.

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2. From the perusal of the judgment of the learned Single Judge it appears that the appellant claims to be the owner of the land bearing Survey No. 76/1 and Survey No. 76/2 of Thotada Guddadahalli Village, Bangalore North Taluk. The appellant alleged that these two plots of land were outside the purview of the Framework Agreement (FWA) and notification issued under Sections 28(1) and 28(4) of the Karnataka Industrial Areas Development Act (the KIAD Act). While dismissing the writ petition, the learned Single Judge held that the acquisition proceedings in question were challenged by the writ petitioner, the appellant herein, in a previous Writ Petition No. 46078 of 2003 which was initially accepted and the acquisition proceedings were quashed. Then on appeal, the Division Bench (in Writ Appeals Nos. 713 and 2210 of 2004) reversed the judgment of the learned Single Judge. Thereafter, the Division Bench order was upheld by this Court and this Court approved the acquisition proceedings. Therefore, the writ petition, out of which this present appeal arises, purports to be an attempt to litigate once again, inter alia, on the ground that the aforesaid blocks of land were outside the purview of the FWA dated 3-4-1997.

3. The learned Judges of the Division Bench held that the second round of litigation is misconceived inasmuch as the acquisition proceedings were upheld right up to this Court. The Division Bench in the impugned judgment noted the aforesaid facts which were also noted by the learned Single Judge. Apart from that the Division Bench also noted that another batch of public interest litigation in WP No. 45334 of 2004 and connected matters were also disposed of by this Court directing the State of Karnataka and all its instrumentalities including the Housing Board to forthwith execute the project as conceived originally and upheld by this Court and it was also directed that the FWA be implemented. The Division Bench, however, noted that on behalf of the appellant an additional ground has been raised that the acquisition stood vitiated since no award was passed as contemplated under Section 11-A of the Land Acquisition Act (hereinafter "the said Act").

4. One of the contentions raised before the Division Bench on behalf of the appellant was that the question of principle of constructive res judicata is not applicable to a writ petition. This contention was raised in the context of alleged non-publication of award and the consequential invalidation of the acquisition proceeding. Even though that contention was raised for the first time before the Division Bench, the Division Bench, after referring to several judgments of this Court, held that the said contention is not tenable in law.

5. The Division Bench also noted that in the earlier round of litigation the contentions relating to the land falling outside the area of the FWA being acquired, were raised and were repelled. In fact the contentions, raised in the previous round of litigation, have been noted expressly in para 17 of the impugned judgment, which are as under:

"1. Most of the lands in question fall outside the area required for peripheral road, etc. and they are fully developed. The acquisition for the benefit of private company like NICE Ltd. could not be termed as public purpose.

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a 2. The acquisition for peripheral road, etc. would be illegal notwithstanding the definition of infrastructural facilities as incorporated under Section 2(8-a) of the Act. The proposed acquisition is in respect of the alleged contract between the State and M/s NICE Ltd. which is stated to be based on agreement dated 3-4-1997.

b 3. It amounts to colourable exercise of power and fraud on power and in such an event, the entire acquisition proceedings are to have been quashed by the learned Single Judge.

c 4. On reading para 23(2) of the impugned order, it is clear that the proposed acquisition of land as notified under Section 28(1) of the Act is different from the alleged purpose, which are quite different and from the same, it is clear that the acquisition initiated is not bona fide, but the same is as a result of colourable exercise of power coupled with exercise of fraud on power and on this count also, the notification issued under Section 28(1) also ought to have been quashed.

d 5. The Government did not apply its mind to the acquisition proceedings and there is total non-application of mind by the Government to the relevant facts in initiating the acquisition proceedings under the KIAD Act.

e 6. There was a total change in the stand of the opponents with regard to the 'public purpose' which was stated in the preliminary notification vis-à-vis their statement of objection filed before the Court and moreover the conduct of M/s NICE Co. in allotting certain extent of lands to the Association of India Machine Tool Manufacturers (AIMTM) to put up a big conventional centre, even before the acquisition proceedings are complete, disentitles them from supporting the acquisition of lands.

f 7. Since admittedly no industrial area was being framed in the lands proposed to be acquired, the Karnataka Industrial Areas Development Board could never be permitted to acquire lands for the formation of infrastructural facility without there being any industries."

g 6. In the impugned judgment at para 18, the findings of the previous Division Bench, on the contentions extracted above, were also noted. Relevant parts of it are extracted:

h "Insofar as the appeals filed by the appellant, Indian Machine Tools Manufacturers Association in Writ Appeals Nos. 3326-27 of 2004 are concerned, we find that there is considerable force in the submission made by the learned counsel for the appellant that the writ petition filed by Respondents 1 and 2 itself was not maintainable. In fact the learned Senior Counsel for the contesting respondent fairly conceded the same. *The writ petition filed by the 2nd respondent, M. Nagabhushan in WP No. 39559 of 2003 came to be dismissed by this Court holding that he had purchased the land in question from its previous owner D.R. Raghavendra subsequent to final notification issued under Section 28(4) of the Act and that further the previous owner D.R. Raghavendra had already handed over possession of the land in question to the Land Acquisition Officer by accepting the award.*

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Therefore, apart from the fact that there is no merit in any of the contentions urged on behalf of the landowners, we find that the appeals filed by the appellant Indian Machine Tool Manufacturers Association has to succeed on the ground that the writ petition filed by Respondents 1 and 2 itself was not maintainable. Since the appellant IMTMA was not a party before the learned Single Judge, the leave sought for is granted.”

(emphasis supplied)

7. Challenging the aforesaid judgment, the present appellant filed a special leave petition before this Court, which, on grant of leave, was numbered as Civil Appeal No. 3878 of 2005. The grounds which were substantially raised by the present appellant in the previous appeal (No. 3878 of 2005) have been raised again in this appeal. The alleged grounds in the present appeal about acquisition of land beyond the requirement of the FWA were raised by the present appellant in the previous Appeal No. 3878 of 2005 also.

8. On those contentions, a three-Judge Bench of this Court, while dealing with several appeals including the one filed by the present appellant, rendered the judgment in *State of Karnataka v. All India Manufacturers Organisation*¹ (*AIMO case*), wherein the said three-Judge Bench held: (SCC p. 711, para 76)

“76. The next contention urged on behalf of the landowners is that the lands were not being acquired for a public purpose. The counsel who have argued for the landowners have expatiated in their contention by urging that land in excess of what was required under the FWA had been acquired; land far away from the actual alignment of the road and periphery had been acquired; consequently, it is urged that even if the implementation of the highway project is assumed to be for a public purpose, acquisition of land far away therefrom would not amount to a public purpose nor would it be covered by the provisions of the KIAD Act.”

9. In para 77 of the said Report, it was further held: (*AIMO case*¹, SCC pp. 711-12)

“77. In our view, this was an entirely misconceived argument. As we have pointed out in the earlier part of our judgment, the Project is an integrated infrastructure development project and not merely a highway project. The Project as it has been styled, conceived and implemented was the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. As an integrated project, it may require the acquisition and transfer of lands even away from the main alignment of the road.”

¹ (2006) 4 SCC 683

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In SCC para 79 at p. 712 of the Report, this Court affirmed the previous judgment of the Division Bench of the High Court in the following words:

a “79. The learned Single Judge erred in assuming that the lands acquired from places away from the main alignment of the road were not a part of the Project and that is the reason he was persuaded to hold that only 60% of the land acquisition was justified because it pertained to the land acquired for the main alignment of the highway. This, in the view of the Division Bench, and in our view, was entirely erroneous. The

b Division Bench was right in taking the view that the Project was an integrated project intended for public purpose and, irrespective of where the land was situated, so long as it arose from the terms of the FWA, there was no question of characterising it as unconnected with a public purpose. We are, therefore, in agreement with the finding of the High Court on this issue.”

c 10. The Division Bench judgment of the High Court was further affirmed by this Court in clear and express words in SCC para 81 of the Report: (*AIMO case*¹, SCC pp. 712-13)

d “81. In summary, having perused the well-considered judgment of the Division Bench which is under appeal in the light of the contentions advanced at the Bar, we are not satisfied that the acquisitions were, in any way, liable to be interfered with by the High Court, even to the extent as held by the learned Single Judge. We agree with the decision of the Division Bench that the acquisition of the entire land for the Project was carried out in consonance with the provisions of the KIAD Act for a public project of great importance for the development of the State of Karnataka. We do not think that a project of this magnitude and urgency

e can be held up by individuals raising frivolous and untenable objections thereto. The powers under the KIAD Act represent the powers of eminent domain vested in the State, which may need to be exercised even to the detriment of individuals’ property rights so long as it achieves a larger public purpose. Looking at the case as a whole, we are satisfied that the Project is intended to represent the larger public interest of the State and

f that is why it was entered into and implemented all along.”

g 11. We find that disregarding the aforesaid clear finding of this Court, the appellant, on identical issues, further filed a new writ petition out of which the present appeal arises. That writ petition, as noted above, was rejected both by the learned Single Judge and by the Division Bench in clear terms. It is obvious that such a litigative adventure by the present appellant is clearly

g against the principles of *res judicata* as well as principles of constructive *res judicata* and principles analogous thereto.

h 12. The principles of *res judicata* are of universal application as they are based on two age-old principles, namely, *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the

same cause. This doctrine of *res judicata* is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest. a

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of *res judicata* has been evolved to prevent such an anarchy. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. b c

14. Tek Chand, J. delivering the unanimous Full Bench decision in *Lachmi v. Bhullar*² traced the history of this doctrine both in Hindu and Mohammedan jurisprudence as follows: (ILR pp. 391-92) d

“In the *Mitakshra* (Book II, Chapter I, Section V, verse 5) one of the four kinds of effective answers to a suit is ‘a plea by former judgment’ and in verse 10, *Katyayana* is quoted as laying down that ‘one against whom a judgment had formerly been given, if he brings forward the matter again, must be answered by a plea of *purva nyaya* or former judgment’ (Macnaughten and Colebrooke’s translation, p. 22). The doctrine, however, seems to have been recognised much earlier in Hindu jurisprudence, judging from the fact that both *Smriti Chandrika* (Mysore Edn., pp. 97-98) and *Virmitrodaya* (Vidya-Sagar Edn., p. 77) base the defence of *prang nyaya* (former decision) on the following text of the ancient law-giver *Harita*, who is believed by some Orientalists to have flourished in the 9th century BC and whose *Smriti* is now extant only in fragments— e f

“The plaintiff should be non-suited if the defendant avers: “in this very affair, there was litigation between him and myself previously”, and it is found that the plaintiff had lost his case.’

There are texts of *Prasara* (Bengal Asiatic Society Edn., p. 56) and of *Mayukha* (Kane’s Edn., p. 15) to the same effect. g

Among Muhammadan law-givers similar effect was given to the plea of ‘*Niza-i-munfasla*’ or ‘*Amar Mania taqrir mukhalif*’. Under Roman Law, as administered by the Proetors’ courts, a defendant could repel the plaintiff’s claim by means of *exceptio rei judicatae* or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in *Roby’s Roman Private* h

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Law (Vol. II, p. 338) the general principle recognised was that ‘one suit and one decision was enough for any single dispute’ and that ‘a matter once brought to trial should not be tried except, of course, by way of appeal’.”

15. The learned Judge in *Bhulli case*² also noted that in British India the rule of *res judicata* was first introduced by Section 16 of Bengal Regulation 3 of 1773 which prohibited the Zila and City Courts from entertaining any cause which, from the production of a former decree or the record of the court, appears to have been heard and determined by any Judge or any Superintendent of a court having competent jurisdiction. The learned Judge found that the earliest legislative attempt at codification of the law on the subject was made in 1859, when the first Civil Procedure Code was enacted, whereunder Section 2 of the Code barred every court from taking cognizance of suits which, on the same cause of action, have been heard and determined by a court of competent jurisdiction. The learned Judge opined, and in our view rightly, that this was partial recognition of the English rule insofar as it embodied the principles relating to estoppel by judgment or estoppel by record. Thereafter, when the Code was again revised in 1877, the operation of the rule was extended in Section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition was extended against rearguing an issue, which had been heard and finally decided between the same parties in a former suit by a competent court. The learned Judge also noted that before the principle assumed its present form in Section 11 of the Code of 1908, the section was expanded twice. However, the learned Judge noted that Section 11 is not exhaustive of the law on the subject.

16. It is nobody’s case that the appellant did not know the contents of the FWA. From this it follows that it was open to the appellant to question, in the previous proceeding filed by it, that his land which was acquired was not included in the FWA. No reasonable explanation was offered by the appellant to indicate why he had not raised this issue. Therefore, in our judgment, such an issue cannot be raised in this proceeding in view of the doctrine of constructive *res judicata*.

17. It may be noted in this context that while applying the principles of *res judicata* the court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that:

“... the application of the rule by courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.”

(See *Sheoparsan Singh v. Rammandan Singh*³, IA at p. 99 : ILR at p. 706.)

18. Therefore, any proceeding which has been initiated in breach of the principle of *res judicata* is *prima facie* a proceeding which has been initiated in abuse of the process of court.

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19. A Constitution Bench of this Court in *Devilal Modi v. STO*⁴, has explained this principle in very clear terms: (AIR p. 1152, para 7)

“7. ... But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens’ fundamental rights. The general principle underlying the doctrine of *res judicata* is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide *Daryao v. State of U.P.*⁵).”

20. This Court in *AIMO case*¹ explained in clear terms that principle behind the doctrine of *res judicata* is to prevent an abuse of the process of court. In explaining the said principle the Bench in *AIMO case*¹ relied on the following formulation of Somervell, L.J. in *Greenhalgh v. Mallard*⁶ (All ER p. 257 H): (*AIMO case*¹, SCC p. 700, para 39)

“39. ... ‘I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that *it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.*’”
(emphasis supplied in *AIMO case*¹)

The Bench in *AIMO case*¹ also noted that the judgment of the Court of Appeal in *Greenhalgh*⁶ was approved by this Court in *State of U.P. v. Nawab Hussain*⁷, SCC at p. 809, para 4.

21. Following all these principles a Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers’ Assn. v. State of Maharashtra*⁸ laid down the following principle: (SCC p. 741, para 35)

“35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of *res judicata*.”

4 AIR 1965 SC 1150

5 AIR 1961 SC 1457 : (1962) 1 SCR 574

6 (1947) 2 All ER 255 (CA)

7 (1977) 2 SCC 806 : 1977 SCC (L&S) 362

8 (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348

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a 22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

b 23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in *K.K. Modi v. K.N. Modi*⁹. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p. 592)

c “44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reargitation may or may not be barred as res judicata.”

d 24. In coming to the aforementioned finding, this Court relied on *The Supreme Court Practice, 1995* published by Sweet & Maxwell (p. 344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (*K.K. Modi case*⁹, SCC p. 592, para 43)

e “43. ... ‘This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.’ ”

f 25. On the premises aforesaid, it is clear that the attempt by the appellant to reargite the same issues which were considered by this Court and were rejected expressly in the previous judgment in *AIMO case*¹, is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto.

g 26. The other point which has been argued by the appellant is that Notification dated 30-3-2004 issued under Section 28(4) of the KIAD Act stands vitiated in view of the provisions of Section 11-A of the said Act inasmuch as no award was passed within two years from the date of the notification. This Court is unable to accept the aforesaid contention for the following reasons.

h 27. It may be noted that the said question was not urged by the appellant in its writ petition before the learned Single Judge. Of course, this was urged before the Division Bench of the High Court unsuccessfully. Apart from that we also find no substance in the aforesaid contentions.

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28. If we compare the provisions of Sections 28(4) and 28(5) of the KIAD Act with the provisions of Sections 4 and 6 of the said Act, we discern a substantial difference between the two. In order to appreciate the purport of both Sections 28(4) and 28(5) of the KIAD Act, they are to be read together and are set out below: a

“28. *Acquisition of land.*— * * *

(4) After orders are passed under sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section (1), a declaration shall, by notification in the Official Gazette, be made to that effect. b

(5) On the publication in the Official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.”

29. The appellant has not challenged the validity of the aforesaid provisions. Therefore, on a combined reading of the provisions of Sections 28(4) and 28(5) of the KIAD Act, it is clear that on the publication of the Notification under Section 28(4) of the KIAD Act i.e. from 30-3-2004, the land in question vested in the State free from all encumbrances by operation of Section 28(5) of the KIAD Act, whereas the land acquired under the said Act vests only under Section 16 thereof, which runs as under: c

“16. *Power to take possession.*—When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.” d

30. On a comparison of the aforesaid provisions, namely, Sections 28(4) and 28(5) of the KIAD Act with Section 16 of the said Act, it is clear that the land which is subject to acquisition proceeding under the said Act gets vested with the Government only when the Collector makes an award under Section 11, and the Government takes possession. Under Sections 28(4) and 28(5) of the KIAD Act, such vesting takes place by operation of law and it has nothing to do with the making of any award. This is where Sections 28(4) and 28(5) of the KIAD Act are vitally different from Sections 4 and 6 of the said Act. e

31. A somewhat similar question came up for consideration before a three-Judge Bench of this Court in *Pratap v. State of Rajasthan*¹⁰. In that case the acquisition proceedings commenced under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 and the same contentions were raised, namely, that the acquisition notification gets invalidated for not making an award within a period of two years from the date of notification. Repelling the said contention, the learned Judges held that once the land is vested in the Government, the provisions of Section 11-A are not attracted and the acquisition proceedings will not lapse. (*Pratap case*¹⁰, SCC para 12 at p. 8 of the Report.) f
g

32. In *Munithimmaiah v. State of Karnataka*¹¹ this Court held that the provisions of Sections 6 and 11-A of the said Act do not apply to the h

¹⁰ (1996) 3 SCC 1

¹¹ (2002) 4 SCC 326

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a provisions of the Bangalore Development Authority Act, 1976 (the BDA Act). In SCC para 15 at p. 335 of the Report this Court made a distinction between the purposes of the two enactments and held that all the provisions of the said Act do not apply to the BDA Act. Subsequently, the Constitution Bench of this Court in *Offshore Holdings (P) Ltd. v. Bangalore Development Authority*¹², held that Section 11-A of the said Act does not apply to acquisition under the BDA Act.

b **33.** The same principle is attracted to the present case also. Here also on a comparison between the provisions of the said Act and the KIAD Act, we find that those two Acts were enacted to achieve substantially different purposes. Insofar as the KIAD Act is concerned, from its Statement of Objects and Reasons, it is clear that the same was enacted to achieve the following purposes:

c “It is considered necessary to make provision for the orderly establishment and development of industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for industrial development and establish a board to develop such areas and make available lands therein for establishment of industries.”

d **34.** The KIAD Act is of course a self-contained code. The said Act is primarily a law regulating acquisition of land for public purpose and for payment of compensation. Acquisition of land under the said Act is not concerned solely with the purpose of planned development of any city. It has to cater to different situations which come within the expanded horizon of public purpose. Recently the Constitution Bench of this Court in *Girnar Traders (3) v. State of Maharashtra*¹³ held that Section 11-A of the said Act does not apply to acquisition under the provisions of the Maharashtra Regional and Town Planning Act, 1966.

e **35.** The learned counsel for the appellant has relied on the judgment of this Court in *Mariyappa v. State of Karnataka*¹⁴. The said decision was cited for the purpose of contending that Section 11-A is applicable to an acquisition under the KIAD Act. In *Mariyappa*¹⁴ before coming to hold that provision of Section 11-A of the Central Act applies to the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (hereinafter “the 1972 Act”), this Court held that the 1972 Act is not a self-contained code. The Court also held that the 1972 Act and the Central Act are supplemental to each other to the extent that unless the Central Act supplements the Karnataka Act, the latter cannot function. The Court further held that both the Acts, namely, the 1972 Act and the Central Act deal with the same subject. But in the instant case the KIAD Act is a self-contained code and the Central Act is not supplemental to it. Therefore, the ratio in *Mariyappa*¹⁴ is not attracted to the facts of the present case.

g **36.** Following the aforesaid well-settled principles, this Court is of the opinion that there is no substance in the contention of the appellant that

h 12 (2011) 3 SCC 139 : (2011) 1 SCC (Civ) 662 : (2011) 1 Scale 533
 13 (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578 : (2011) 1 Scale 223
 14 (1998) 3 SCC 276

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acquisition under the KIAD Act lapsed for alleged non-compliance with the provisions of Section 11-A of the said Act. For the reasons aforesaid all the contentions of the appellant, being without any substance, fail and the appeal is dismissed. a

37. For the reasons indicated hereinabove, this Court holds that the filing of this appeal before this Court is an instance of an abuse of the process of court. The main purpose was to hold up, on one or the other pretext, the land acquisition proceeding which, as held by this Court in *AIMO case*¹, was initiated to “achieve a larger public purpose”. b

38. In that view of the matter, this Court makes it clear that the State Government should complete the project as early as possible and should not do anything, including releasing any land acquired under this project, as that may impede the completion of the project and would not be compatible with the larger public interest which the project is intended to serve. c

39. This Court, therefore, dismisses this appeal with costs assessed at ₹10 lakhs, to be paid by the appellant in favour of the Karnataka High Court Legal Services Authority within a period of six weeks from date. In default, a proceeding will be initiated against the appellant on a complaint by the Karnataka High Court Legal Services Authority by the appropriate authority under the relevant Public Demand Recovery Act for recovery of this cost amount as arrears of land revenue. d

40. The appeal is, thus, dismissed with costs as aforesaid. Interim orders, if any, are vacated.

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(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.) e

HARYANA STATE WAREHOUSING
 CORPORATION AND OTHERS

.. Petitioners;

Versus

JAGAT RAM AND ANOTHER

.. Respondents. f

SLPs (C) No. 2659 of 2011[†] with No. 451 of 2011,
 decided on February 23, 2011

A. Service Law — Promotion — Seniority-cum-merit — Valid application of — Respondent 1 being senior to petitioner and having minimum necessary merit but being less meritorious than petitioner — Effect of — Respondent 1, on facts, held (*per curiam*), entitled to promotion over petitioner — Seniority-cum-merit criterion requires a minimum necessary merit but does not require comparative assessment of merit — Held, petitioner cannot be given promotion in preference to Respondent 1 on ground that he is more meritorious, would violate seniority-cum-merit criterion g

(Paras 14 to 20; and 40 to 49)

[†] From the Judgment and Order dated 11-10-2010 of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 490 of 2010 (O&M) h

Item No.5

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No.14/2018(WZ)
M.A. No. 21/2018 (WZ) & I.A. No. 95/2022 (WZ)

Suresh Dhoka & Anr.

.....Applicant(s)

Versus

M/s T.N. Pandya & Ors.

....Respondent(s)

Date of hearing: 06.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant(s)	:	Mr. Abhay D. Parab, Advocate
Respondent	:	Mr. Saket Mone, Advocate for R-1, 3 & 4 Mr. Aniruddha Kulkarni, Advocate for R-5 Mr. Sameer Khale, Advocate for R-6 (MCGM) Mr. Yashwant Dhanegave, Advocate for R-8 Mr. Abhay Itagi, Advocate for R-11

ORDER

1. This application has been moved with a prayer that the Respondent Nos. 1 to 4 be directed to pay an amount of approx. Rs. 222 crores (Rupees Two hundred & Twenty Two Crores only) jointly and severally towards the restoration of damaged environment/ecology of the natural resources of bore wells, groundwater which is unaccountably sold commercially in open market to the Respondent, State of Maharashtra and such amount be ordered to be credited to the Environment Relief Fund.

2. It is further prayed that Respondent Nos. 5 to 11 be directed to ascertain the amount of environmental compensation for illegally

abstracting the groundwater from the said two wells from the year 1997 till the closure of the said two wells.

3. In the body of the application, it is submitted that the Applicant had filed O.A. No. 82/2016 (WZ) with the relief that the Respondent Nos. 1 to 4 be restrained from abstracting the groundwater from the two bore wells illegally and after hearing the parties, the order dated 02.03.2017 was passed to the following effect:-

"1. The Respondent No.1-M/s. T.N. Pandya & Others, Respondent No. 2- Shri Tripuraprasad Nanalal Pandya, Respondent No. 3- Shri Prakash Tripuraprasad Pandya and Respondent No. 4- Shri Manoj Mahendrahumar Pandya, their business agents, contractors, servants and any other person claiming through, are restrained from abstracting water from the said two bore-wells situated at 43, Bomanji Master lane, 625, Jagannath Shankar Sheth road, Mumbai-400 002, without obtaining requisite permissions/NOCs from the concerned authorities namely Municipal Corporation of Greater Mumbai (MCGM) and Central Ground Water Authority (CGWA) or State Ground Water Authority (SGWA) as the case may be.

2. The Respondent Nos.1 to 4 shall jointly and severally pay and deposit as amount of Rs. 30,000/- (Rs. thirty thousand) with the Registrar, National Green Tribunal, Western, Zone Bench, Pune for being disbursed to the Applicants on payment of one (1) per cent Court Fees payable on the said amount of compensation awarded as per Rule 12 of the National Green Tribunal (Practice and Procedure) Act, 2011. The amount so deposited shall be paid to the Applicants on payment of Court Fee payable as per Law.

3. The Respondent Nos.1 to 4 shall jointly and severally pay an amount of Rs. 20,000/- (Rs. Twenty thousand) as costs of this Application to the Applicants".

4. Further, it is submitted that Respondent Nos. 1 to 4 complied with the monetary part of the order dated 02nd March, 2017 but continued with the violation of the order at Sr. No. 1. Therefore, the Applicants filed Execution Application (No. 20/2017), wherein after consideration, following order was passed:-

“Respondent Nos. 1 to 4 have been restrained from abstracting water from two bore wells situated at 43, Bomaji Mster Lane, 625, Jagannath Shankarseth Road, Mumbai- 400002, without obtaining requisite permissions/ NOC from the concerned Authorities namely; the Municipal Corporation of Greater Mumbai (MCGM), the Central Groundwater Authority (CGWA) or State Groundwater Authority (SGWA) as the case may be.

In response to Notice issued in the present Execution Application, we have before us Respondent No. 3- Mr. Prakash Pandya for himself and for an on behalf of Respondent Nos. 1,2 and 4. He submits that, he has permission form MCGM to abstract water, however, he does not hold any permission from either from CGWA or SGWA. He submits that in the given situation, Respondents are permanently closing the said wells and steps to close the said wells will be taken as per the advice of MCGM on Thursday, 3rd August, 2017 at about 3:00 P.M. and nothing would be kept available for making any further grievance in respect of the said two bore wells.

Learned Counsel for the Applicant welcomes this development. However, he submits that abstraction of water had continued despite passing of order on 2nd March, 2017.

In the given situation, we direct the Applicant to remain present at the site of two bore-wells at about 3:00 P.M. on 3rd August, 2017 to witness permanent closure of the said two bore-wells and report back to us with his nod regarding compliance of the said statement. As regards damages, his grievance regarding unlawful abstraction of the well water after passing of the order in execution, the Applicant is free to move an appropriate Application seeking amongst other reliefs the environmental compensation separately”.

5. It is further submitted that the Respondent Nos. 1 to 4 continuously abstracted the groundwater illegally from the wells and sold it commercially to gain huge profits which has caused serious pollution persistently, which has also been observed by the Tribunal in the order

mentioned above. The said abstraction was done without license/NOC/permission which amounts to theft of natural resources.

6. It is admitted on the part of Respondent Nos.1 to 4 that they carried the business till the order passed in Execution Application No. 20 of 2017 and did not have the License/N.O.C./ Permission to abstract the groundwater from the said two wells, which was sold by them in the open market. Therefore, it is necessary to ascertain the loss caused by the Respondents and recover the same for which investigation is required by the Authorities, appointed under the statute who have powers delegated to them.

7. The Applicants have placed the calculation regarding loss caused to the environment after considering the electricity consumption made available from the year November, 2006, filling of number of tankers per day and the rate of tanker containing 10,000 ltrs. of water, in their correspondence made with various authorities. After making inquiry, the tanker owner was charging Rs 3,000/- for one tanker containing 10,000 ltrs. of water to its customers and the calculation made says that approximately 7,41,776 nos. of water tankers were sold in market by the Respondent Nos. 1 to 4 which comes in terms of money to Rs. 222 crores (Rupees Two hundred Twenty Two Crores). The said figure needs to be verified by the Respondent Nos. 5 to 11 or any other Competent Authority according to the relevant provisions, directives circulars, notifications etc. The concern authorities have not furnished the necessary documents to calculate the actual environmental loss caused from the year 1997 till the closure of the said two wells. The Applicants have also filed RTI application before the Authorities mentioned in para 'r' at pages 17 to 18 of the pleadings for recovery of the environmental loss.

8. It is further submitted that the Tribunal in its order dated 25.07.2017 in Execution Application No. 20/2017, directed as below:-

“As regards damages, his grievance regarding unlawful abstraction of the well water after passing of the order in execution, the Applicant is free to move an appropriate Application seeking amongst other reliefs the environmental compensation separately”.

9. Further, it is submitted that pursuant to that order, the Applicants made the calculation by applying simple theory that the illegal trade and industry of the groundwater withdrawal from both wells and its commercial sale with the help of big/small water tankers, day and night using electricity supply, shows that total 7,41,776 tankers of the capacity of 10,000 ltrs. were pressed into service.

10. The stand of the Respondent Nos. 1, 3 & 4 is as follows:-

- (i) The application is hit by the Principles of *Res-Judicata/ Constructive Res Judicata* since the Applicants had earlier filed the *Original Application No. 82 of 2016 (WZ)* under Section 15 of National Green Tribunal Act, 2010, *inter alia* seeking compensation, where-on the Tribunal had awarded a sum of Rs. 30,000/- (Rupees Thirty Thousand only) as compensation to the Applicants. The Applicants for the reasons best known to them restricted the compensation limited to medical expenses of Rs. 30,000/- (Rupees Thirty Thousand only). The cause of action seeking compensation in both the cases i.e. Original Application No. 82/2016 and the present one, are identical. Hence, the relief claimed, is clearly barred by Principles of *Res-Judicata/ Constructive Res Judicata* as the same could have been claimed when Section 15 was originally invoked by the Original Applicants in O.A. No. 18/2016 (WZ).

- (ii) The Application for relief of compensation and restitution can be entertained within a period of **five years** from the date on which the cause of action for such compensation or relief first arose. However, the Tribunal may, if satisfied, could allow further period not exceeding sixty days. The cause of action which has pleaded for filing the present Application is said to have arisen in the year 1997 when it is being alleged the abstraction of groundwater first took place and therefore, the Applicants are seeking calculation of the environmental loss caused in terms of money from the year 1997 till the closure of the wells which is obviously time barred.
- (iii) The calculation made by Applicants of an amount of Rs. 222 crores is based on their whims and fancies. The said calculation is made based on using of the electricity consumption from the year November 2006 which is absurd. The Respondent No. 2 (since deceased) was looking after the business activities of Respondents. The method used for computing the said amount is absolutely vague as it has taken into consideration the consumption of electricity and the filling of tankers per day as well as their rates. It is inconceivable that every unit of electricity consumed, was towards the abstraction of groundwater.
- (iv) Further, it is submitted that the liberty granted to the Applicants by the Tribunal was limited and contemplated redressal of purported grievance regarding unlawful abstraction of the well water 'after passing of the order in execution'. Therefore, such liberty exclusively ranges from the period

starting after the passing of Judgment dated 02nd March 2017 till 03rd August, 2017 (order passed in execution application), when the bore-wells were permanently closed as was confirmed by the Applicants on 08th August 2017.

11. The stand of the Respondent No. 6/The Assistant Municipal Commissioner, is as follows:-

- (i). The Respondent No. 6 has not granted any permission/license/NOC to Respondent Nos. 1 to 4 for abstraction of water from two wells and has complied with all the directions of the Tribunal given vide orders dated 25.07.2017 and 08.08.2017. The answering respondent is not competent authority to calculate any loss caused to the environment.

12. The stand of the Respondent No. 7/Central Ground Water Authority (CGWA) is as follows:-

- (i). The Project Proponent has so far not applied to CGWA for grant of NOC for abstraction of groundwater, hence are not permitted to withdraw the same. In the year 2020, in supersession of all the earlier guidelines issued by CGWA, Ministry of Jai Shakti, released its revised guidelines regarding groundwater extraction which was notified on 24.09.2020 to the effect that obtaining/renewal of NOC by all existing and new industries using ground water is a mandatory. As per the said Notification, the bulk water suppliers are also required to obtain NOC from CGWA. The guidelines for the same have also been issued in the year 2021 as is evident from the notified guidelines dated 24.09.2020. CGWA has appointed the District Magistrate/

District Collector/ Sub- Divisional Magistrates of each Revenue District/Sub Division to be the Authorized Officers, who have been delegated the power to seal illegal wells, disconnect electricity supply to the energized well, launch prosecution against offenders etc.

- (ii). As per the said guidelines, extraction of ground water for commercial use of industries, infrastructure units and mining projects without a valid No Objection Certificate from appropriate authority, shall be considered illegal and such entities shall be liable to pay Environmental Compensation for the quantum of ground water so extracted. The formula which would be applicable for making environmental compensation is also mentioned, which is as follows:-

$EC_{GW} = \text{Ground water consumption per day} \times \text{Environmental Compensation rate (} EC_{GW} \text{)} \times \text{No. of days} \times \text{Deterrence factor.}$

Where ground water consumption in in m^3/day and EC_{GW} in Rs./cum Rates of Environmental Compensation (EC_{GW}) for various types of users in different categories of assessment units are given in the guidelines. The NOC for abstraction of groundwater, thereby are not permitted to withdraw groundwater.

- (iii). It is further stated that environmental compensation may be calculated, considering CGWA notified guidelines dated 24.09.2020 by MPCB and District Collector, Mumbai.

13. The stand of the Respondent No. 8/The Maharashtra Water Resources Regulatory Authority (MWRRA) is as follows:-

- (i). It is submitted that as per the guidelines issued by CGWA, the answering respondent is not the appropriate authority for computation of the environmental compensation.

14. None has appeared from the side of Respondent No. 9 nor has any reply affidavit is filed on record.

15. The stand of the Respondent No. 11/the General Manger, the Brihan Mumbai Electric Supply & Transport Undertaking, is as follows:-

- (i). In their affidavit, it is submitted that at the time of inspection made by them on 07.11.2016 and 23.12.2016, two meters were found which were billed for the electricity consumed by the well water pumps for drawing water, which was used for filling the water tanks. The meters of both the accounts had already been sanctioned for the specific purpose of water pumps. Therefore, no unauthorized use of load claim was preferred on the consumers under Section 126 of the I.E. Act, 2003 (Electricity Act). Several inspections were made more particularly on 17.12.2016, 17.02.2017, 20.02.2017, 23.02.2017, 11.03.2019 and 03.08.2021 during day time as well as during the night shifts and it was noticed that there was a third meter also which was being used for Karuna Transport Office which was initially installed in the name of Bombay Silk House at Pandya Mansion and was later on removed on 09.09.2003. However, a new meter was installed on 28.11.2006 again in the name of Bombay Silk House under the same account.
- (ii). It is further clarified that the said meter was being used for the purpose of office and not for filling of the water tankers. During inspection, no unauthorized uses were found by the consumer.

(iii). Further, it is submitted that environmental compensation as calculated by the Applicant, cannot be ascertained or confirmed by the answering respondent, as the said role does not fall under the purview of it as it is not appropriate authority for the same.

16. None else has appeared nor have filed their reply affidavits.

17. We have heard the arguments of the Learned Counsels for the Applicant as well as Respondents who have filed their replies above.

18. From the side of Learned Counsel for the Applicant, it is vehemently argued that the Applicant has the authority to move the present application under the order passed by the Tribunal in Execution Application referred above, therefore, the present application has been moved separately for calculation of environmental compensation and for its realization from the Respondent Nos. 1 to 4.

19. From the side of Respondent Nos. 1, 3 & 4, it is vehemently argued that the relief which has been prayed, should have been pressed by them earlier at the time of filing the O.A. No. 82/2016 (WZ) because, cause of action is common and for the same cause of action, the second proceedings would not lie, the same being hit by the Principles of *Res Judicata/ Constructive Res Judicata*.

20. We find force in the argument of Learned Counsel for Respondent Nos. 1, 3 & 4, particularly, in view of the fact that cause of action is common in both the applications i.e. O.A. No. 82/2016 (WZ) decided earlier and the present one.

21. The Learned Counsel for the Applicant takes plea that he came to know about the illegal extraction of water subsequently in the month of

April, 2017 and thereafter only, when the Execution Application was filed by him, he has prayed for the environmental compensation to be realized from the Respondent Nos. 1 to 4.

22. We are not convinced with the arguments of the Learned Counsel for the Applicant, particularly, in view of the fact that in the order passed in *O.A. No. 23/2017 (WZ)*, in para 14, it was clearly stated by the Applicant that the Respondents were illegally extracting water and transporting the same through the tankers. Therefore, it cannot be said that he did not have knowledge about the illegal extraction of water when the *O.A. No. 82/2016 (WZ)* was filed, therefore, all reliefs related to it, should have been claimed by him in the said application, Consequently, we find that the said relief at later stage would be hit by the Principles of *res judicata*.

23. The calculation of the amount of environmental compensation to the tune of Rs. 222 crores also appears to be based on conjectures and guess-work and does not appear to have any scientific basis.

24. It has also come on record that the two bore wells were already closed effectively pursuant to the order passed in Execution Application No. 20/2017(WZ) on 02.05.2017 and the permission which is required to be obtained for extraction of groundwater, has been made mandatory by virtue of Notification dated 24.09.2020 issued by the Central Ground Water Authority (CGWA) which is stated in page 168 of the paper book. Therefore, it is apparent that prior to that, there was no requirement to obtain permission for extraction of groundwater from Central Ground Water Authority (CGWA). Therefore, the argument of the Leaned Counsel for the Applicant that the Respondent Nos. 1 to 4 should have been obtained the permission from CGWA, does not sound reasonable because

the said two bore-wells had already been closed effectively by 02.05.2017 much prior to the coming into force the said Notification.

25. In view of above, we are of the opinion that the Applicant does not deserve any relief to be allowed in the present application, hence, it is accordingly disposed of.

26. All the connected applications also stands disposed of.

Dinesh Kumar Singh, JM

Dr.Vijay Kulkarni, EM

September 06, 2022
Original Application No. 14/2018(WZ)
M.A. No. 21/2018 (WZ) & I.A. No. 95/2022(WZ)
P.Kr

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9068 OF 2022

SURESH KUMAR PUKHRAJJI DHOKA & ANR.

Appellant(s)

VERSUS

M/S T.N. PANDYA & ORS.

Respondent(s)

ORDER

After hearing learned counsel for the parties, we are not convinced that a case is made out for interfering with the impugned order.

The civil appeal will stand dismissed.

.....J.
[K.M. JOSEPH]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;

JANUARY 02, 2023.

Validity unknown
Digitally signed by
Neeetu Khosla
Date: 2023.01.02
17:47:02 IST
Reason:

ITEM NO.31

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9068/2022

SURESH KUMAR PUKHRAJJI DHOKA & ANR.

Appellant(s)

VERSUS

M/S T.N. PANDYA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.194497/2022-EXEMPTION FROM FILING O.T.)

Date : 02-01-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Appellant(s)

Mr. Rohan Thawani, Adv.
Ms. Pooja Dhar, AOR

For Respondent(s)

Mr.Guru Krishna Kumar, Sr. Adv.
Mr. Saket Mone, Adv
Ms. Anshula Grover, AOR.
Ms. Nitika Grover, Adv
Mr. Subit Chakrabarti, Adv
Ms. Apurva Pawar, Adv.

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

The civil appeal is dismissed in terms of the signed order.

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

(DEEPAK JOSHI)
COURT MASTER (SH)

(RENU KAPOOR)
ASSISTANT REGISTRAR

(Signed order is placed on the filed.)

**BEFORE THE NATIONAL GREEN
TRIBUNAL
WESTERN ZONAL BENCH AT
THANE
I.A. NO.197 OF 2022
IN
APPEAL NO.12 OF 2017**

Maharashtra State Road
Development Corporation Ltd.
... Applicant

In the matter between:

Dileep B. Nevatia
... Appellant

Versus

Union of India & Ors. ... Respondents

**COMPILATION OF JUDGMENTS ON
BEHALF OF THE APPLICANT**

DATED THIS DAY OF JANUARY 2023

Vidhii Partners, Mumbai
Advocates for the Applicant
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