

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

REVIEW PETITION NO. 9/2023

IN

APPEAL NO. 68/2019 (WZ)

IN THE MATTER OF:

M/s GRENESIIS CONSTRO PVT. LTD. ...PETITIONER

VERSUS

MR. VISHAL ARINJAY SHAH & ORS. ...RESPONDENTS

FILE-A: VOLUME-I

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ADVOCATE FOR RESPONDENT NO. 1

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

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MR. VISHAL ARINJAY SHAH & ORS. ...RESPONDENTS

PRELIMINARY REPLY AFFIDAVIT ON BEHALF OF R-1-MR. VISHAL ARINJAY SHAH (APPELLANT IN APPEAL NO. 68/2019)

I, Vishal Shah S/o Arinjay Shah Aged: Adult, Occupation: Business, R/at: Manorama, S. No. 39, Manik Baug, Sinhagad Road, Pune-411051, do hereby solemnly affirm and state on oath as follows:

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| | 4.1 | MoEFCC Notification dated 14.03.2017 is the law under Article 13 (3) (a) of Constitution of India and Letter dated 30.01.2019 is not the Law and this Letter dated 30.01.2019 is contrary to the Notification dated 14.03.2017 |

| | | |
|--------|-----|---|
| | 4.2 | The Hon'ble Tribunal erred in considering that the Letter dated 30.01.2019 was merely <u>executive in nature</u> without any Legislative Content & force of Law. And the provisions of the Notification dated 14.03.2017 would <u>prevail in order to implement the "Rule of Law"</u> |
| | 4.3 | Letter Dated 30.01.2019 is Not The Part Of Pleadings From Appeal No. 68/2019 |
| | 4.4 | NO 'SPECIFIC TIME BOUND ACTION PLAN'-Period/ Time Limit Is Mentioned For Remediation Plan And Natural & Community Resource Augmentation Plan By PP As Per His Damage Assessment |
| | 4.5 | Till Date PP Have Not Implemented The Remediation Plan And Natural & Community Resource Augmentation Plan Or Not Contributed The Funds To Local Authority And Remediation Plan Cannot Be Unimplemented For Uncertain Time |
| | 4.6 | This Hon'ble NGT cannot have powers of judicial Review making comments on legality and validity of Letter dated 30.01.2019, "Research Paper" etc. to lawful and unlawful and this has to be decided by the Appellant Court in their Jurisdiction if Civil Appeal will be filed |
| Part-E | 5 | Stand of SEIAA |
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PART-A: BRIEF FACTS

1. It is most respectfully state & submits that, R-1-Mr. Vishal A. Shah i.e. Appellant filed Appeal No. 68/2019 (WZ) vide dated 07.09.2019 challenging the procurement of **ex-post facto** Environment Clearance Vide No. SEIAA-EC-0000001952 dated 09.08.2019 from Respondent No. 5-SEIAA to the residential & commercial building construction project "Grand Horizon" under taken by the Respondent No. 2-Mrs. Smita P. Shah & Review Petitioner-M/s. Grenesiis Constro Pvt. Ltd.-PP situated at Survey No. 34/1/4, 39/1A, 39/2/2/1 village: Vadgaon Budruk, Taluka: Haveli, District: Pune on total land area admeasuring 10120 M² having total

BUA of 25335.25 M² out of proposed TBUA of 27060.25 M² within local limits & jurisdiction of Pune Municipal Corporation (PMC). That the Said Appeal is allowed by this Hon'ble NGT vide its Order dated 09.08.2023 and *ex-post-facto* EC granted is set aside with the direction to the SEIAA to consider its issuance again after giving opportunity of hearing to the parties concerned within a period of two months from the date of uploading of the Judgment.

PART-B

2. REVIEW APPLICATION IS ABUSE OF PROCESS OF LAW: IMPORTANT DATES & EVENTS:

A) That the following events shows that the Review Application is abuse of process of law and PP is misleading this Hon'ble NGT;

| Sr. | Event | Date | Para & Page |
|-----|--|------------|---|
| 1. | MoEFCC Notification | 14.03.2017 | ¶6; P@61 ¶7; P@62 |
| 2. | MoEFCC Notification | 08.03.2018 | #Sub-Delegation of Powers to SEAC & SEIAA by MoEFCC P@286 |
| 3. | An Approach for Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases) Revision-R3 "APPROACH PAPER-R3" | 30.01.2019 | ¶35; P@285 "Implementation Strategy: DoE on form such Funds" |
| 4. | An Approach for Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases) Revision-Final "APPROACH PAPER-FINAL-18032019" | 18.03.2019 | ¶35; Maximum Limit-2 Years; Appeal No. 68/2019; P@373 "Implementation Strategy: The Notification Envisages It is expected that such contribution |

| | | | |
|----|---|------------|---|
| | <p>“35. ... and the project proponent can either carry out such work on his own or can contribute to civic or government funds for such ongoing projects. The PP will need to submit the equivalent BG independently as per provisions of notifications.”</p> | | <p>would be effectively utilised within maximum 2 years”</p> <p>PP have submitted the Revision-R3 research paper and not final research paper.</p> |
| 5. | <p>Grant of Ex-post Facto EC by SEIAA</p> <p>Specific Conditions: “(v) Damage Assessed by PP Rs. 33.34 Crores (x) PP to submit BG of Rs. 1.95 Crores to MPCB towards effective implementation of the remediation plan and Natural and Community Resource Plan”</p> <p>General Conditions: (IV) PP abide by the Conditions stipulated by SEAC & SEIAA</p> <p>(LV) This EC is issued <u>subject to the condition that the implementation of EMP, remediation plan and Natural and Community Resource Plan will be completed during the period for which the Bank Guarantee is given, otherwise the BG should be suitably extended up to implementation of EMP.</u></p> | 09.08.2019 | <p>¶3 ¶ Specific Condition-(v) & (x): P@324; ¶ General Condition=(IV) & (LV): P@325 & 327;</p> |

B) That the PP have filed old Research Paper with revision “**APPROACH PAPER-R3**” dated 30.01.2019 and thereafter, there is final Research Paper with Revision “**APPROACH PAPER-FINAL-18032019**” dated 18.03.2019 and thereafter, EC dated 09.08.2019 was granted with specific condition and general condition imposing condition for deposition of BG of Rs. 1.95 Crores and also, to implement the project for remediation Plan and Natural Plan and Community Augmentation Plan, which PP has failed to comply with the same.

C) That the PP have misled by placing wrong Research

paper dated 30.03.2019 and actual revision dated 18.03.2019 has been suppressed, which is part of the Appeal No. 68/2019 at Page@345-373. That the Para-35 of the final revision is clearly fills gap from MoEFCC notification dated 14.03.2017.

- D)** Therefore, PP have abused process of law and misled this Hon'ble NGT while obtaining order of its admission and at the same time SEIAA from its admission to its dissolution dated 10.01.2024 failed to file an affidavit. This callous acts shows the deep collusion between PP and SEIAA officials.

PART-C

3. THIS REVIEW APPLICATION IS NOT MAINTAINABLE:

3.1 WHAT IS REVIEW? AND ERROR APPARENT ON FACE OF RECORD? AND THERE IS NO ERROR IN FINAL ORDER AND REVIEW CANNOT OPEN THE REHEARING OF CASE:

That the PP failed to point out the specific documents which has not been considered by this Hon'ble NGT while passing the final judgment. But placed the Civil Appeal in the form of Review opening entire case rehearing. Therefore, this Review Application is not maintainable and this Hon'ble NGT cannot reopen the case for rehearing under the garb of Review having actual Appeal jurisdiction. That the present Review Application does not satisfy the conditions from Order 47 & Sec. 114 & 115 of the CPC, 1908.

3.2 MAINTAINABILITY & NON-MAINTAINABILITY OF REVIEW AND SC JUDGMENT: That the Hon'ble Supreme Court in very recent judgment at ¶12 in "**KARNIAL SINGH VS. STATE OF HARYANA & ORS.**", have discussed and

clearly laid down the position on maintainable and non-maintainability of Review. That the scope of review is very limited and there are catena of judgments on this settled position;

3.3 WHEN THE REVIEW WILL BE MAINTAINABLE:

That on following ground review is maintainable

- (i)** Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii)** Mistake or error apparent on the face of the record;
- (iii)** Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144: (1922) 16 LW 37: AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526: (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337: JT (2013) 8 SC 275]

3.4 WHEN THE REVIEW WILL NOT BE MAINTAINABLE:

That on following ground review is not maintainable;

- (i)** A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii)** Minor mistakes of inconsequential import.
- (iii)** Review proceedings cannot be equated with the

original hearing of the case.

- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

3.5 NO ERROR ON FACE OF RECORD, ERROR IS FISHED OUT AND SEARCHED BY PP BY WAY OF THIS REVIEW TO OVERCOME THE CIVIL APPEAL JURISDICTION:

That the Hon’ble Supreme Court have made further Observation in ¶13 of the said judgment as below;

“13. It is thus settled that the review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out. We are also equally aware of the fact that the review proceedings cannot be equated with the original hearing of the case. The

review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. We are also aware that such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched.”

That the PP failed to show the clear cut error or mistake in the final judgment and fishing and searching for the error by reopening the case for rehearing and this ground is not permissible and thus review is not maintainable for review.

- 3.6 THE COURT CANNOT SIT IN APPEAL UNDER THE GUISE OF REVIEW ON ITS OWN ORDER:** That the Review Application filed by the PP is nothing but the Civil Appeal and the such Reviews shall not be entertained by this Hon’ble Court as the powers of reviews are very limited and if such practices are allowed, it will be abuse of process of law and miscarriage of the justice.

Therefore, this Review is not maintainable.

PART-D

- 4. REPLY TO THE ISSUES FROM REVIEW APPLICATION:** That the PP have filed the Review Application on following grounds as stated in ¶ 5 & 8 of Review Application;
- A)** MoEFCC Notification dated 14.03.2017 is the law under Article 13 (3) (a) of Constitution of India and Letter dated 30.01.2019 is not the Law and this Letter dated 30.01.2019 is contrary to the Notification dated

14.03.2017;

- B)** The Hon'ble Tribunal erred in considering that the Letter dated 30.01.2019 was merely executive in nature without any Legislative Content & force of Law. And the provisions of the Notification dated 14.03.2017 would prevail in order to implement the "Rule of Law".
- C)** Letter dated 30.01.2019 is not the part of Pleadings from Appeal No. 68/2019;
- D)** **No 'specific time bound action plan-period/ time Limit** is not mentioned for Remediation Plan and Natural & Community Resource Augmentation Plan in Notification dated 14.03.2017; and

4.1 MoEFCC Notification dated 14.03.2017 is the law under Article 13 (3) (a) of Constitution of India and Letter dated 30.01.2019 is not the Law and this Letter dated 30.01.2019 is contrary to the Notification dated 14.03.2017: That the PP is misleading on this issue by stating that the Letter dated 30.01.2019 is not the law under Article 13 (3) (a) of Constitution of India as the MOEFCC Notification dated 14.03.2017 is the only law and have force of law. In actual, intention of the legislature is very clear behind the Notification dated 14.03.2017 and defiantly legislature was not willing to keep the Remediation Plan and Natural & Community Resource Augmentation Plan at the mercy of the Polluters who is availing the benefits of the said notification. Therefore, the provisions of the Clause 13 (5), 13 (6) & 13 (7) of the said Notifications, puts burdens on EAC/SEAC/SEIAA for detailed plans and its implementation while granting the ToR and then to impose the conditions while granting EC.

4.2 The Hon'ble Tribunal erred in considering that the Letter dated 30.01.2019 was merely executive in nature without any Legislative Content & force of Law. And the provisions of the Notification dated 14.03.2017 would prevail in order to implement the "Rule of Law": Let's assume that the Letter is not the Law and only executive Instruction as admitted by the PP himself that the Hon'ble Supreme Court in the case of (1968) 1 SCR 111, **SANT RAM SHARMA Versus STATE OF RAJASTHAN & ORS in ¶7 have clarified that the**

“7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

That as per the contentions of the PP himself, if the Notification dated 14.03.2017 is silent on time frame for implementation of the Remediation Plan and Natural & Community Resource Augmentation Plan, then Authority cannot issue executive instructions. That the PP is relying on Report produced vide Letter dated 30.01.2019 for “Damage Assessment” on one hand and on other hand challenging the legality and validity of the same. That the conduct of PP itself is self-contradictory. Therefore, Report on “Damage Assessment” submitted by the committee vide letter dated 30.01.2019 is having force of law as it is read with Notification, 14.03.2017 and the provisions of the Letter are in consonance with the Notification as well as to fill up the gaps and to achieve the objective of the said notification.

4.3 LETTER DATED 30.01.2019 IS NOT THE PART OF PLEADINGS FROM APPEAL NO. 68/2019; that this contentions of the PP is absolutely wrong and misleading that the important aspect is the “**Research Paper**” submitted along with the Letter dated 30.01.2019 and this Letter is the cover page of the “**Research Paper**”. That the said “**Research Paper**” is part of the pleadings from Appeal No. 68/2019 (WZ) and same is attached & Annexed as “ANNEXURE-A-18” from Page No. 345-373. Moreover, PP has filed old version of this Research Paper and suppressed final version of the actual Research Paper. That the Para No. 35 of the Research Paper from Appeal Compilation at Page No. 373 clearly impose time frame of two years on the PP to implement the Remediation Plan and Natural &

Community Resource Augmentation Plan either by himself or through the local authority by contributing to their ongoing project apart from the BG. Therefore, it cannot be said the “Research Paper” is not the part of Original pleading from Appeal.

- 4.4 NO ‘SPECIFIC TIME BOUND ACTION PLAN’-PERIOD/ TIME LIMIT IS MENTIONED FOR REMEDIATION PLAN AND NATURAL & COMMUNITY RESOURCE AUGMENTATION PLAN BY PP AS PER HIS DAMAGE ASSESSMENT:** That the PP has submitted his “Environmental Impact Assessment (EIA) And Environmental Management Plan (EMP) dated April-2019 (**P@374-545 of Appeal Compilation**) and Assessment for Environmental Damage and Estimation of Remediation Costs submitted by PP dated April-2019 (**P@546-555 of Appeal Compilation**)”. That it is very important to note here that the PP have adopted the procedures laid down from “Research Paper” submitted vide letter dated 30.01.2019 for “Damage Assessment” and same fact can be realised from the Page No. 546-555 of Appeal Compilation. However, PP have filed wrong version of the Research paper with the Review i.e. R3 and Actual Final Revision is not submitted which has substantial clarity in Para No. 35 for Implementation and that the “Remediation Plan and Natural & Community Resource Augmentation Plan” has to implemented within 2 Years i.e. maximum outer limit. But PP failed to implement the same till date as well as PP failed to contribute the EDC amount to the local Authority for their ongoing project and just paying the BG, PP cannot get escape from their liability. Therefore, this Review is not

maintainable as it opens the rehearing of the entire case and also, the issue raised by PP has to be challenged in Appeal that ought to be filed under Sec. 22 of NGT Act, 2010.

4.5 TILL DATE PP HAVE NOT IMPLEMENTED THE REMEDIATION PLAN AND NATURAL & COMMUNITY RESOURCE AUGMENTATION PLAN OR NOT CONTRIBUTED THE FUNDS TO LOCAL AUTHORITY AND REMEDIATION PLAN CANNOT BE UNIMPLEMENTED FOR UNCERTAIN TIME:

That the PP has not implemented the “Remediation Plan and Natural & Community Resource Augmentation Plan” has to implemented within 2 Years i.e. maximum outer limit as well as PP failed to contribute the EDC amount to the local Authority for their ongoing project and just paying the BG, PP cannot get escape from their liability. Therefore the implementation of restoration cannot be at the mercy of polluters and this uncertainty is not the legislature intentions. That the SEAC/SEIAA has failed to impose the timely implementation of remedial plan & other plans for restoration and restitution of the area and just accepted the vague reports of PP and granted the EC in erroneous manner. Therefore, there is no error in the final Order and judgment dated 09.08.2023 and there is no need to review the said judgment and ground raised by the PP in its Review are only Appealable under Sec. 22 of the NGT Act, 2010. Therefore, Review May kindly be dismissed as abuse of process of law.

4.6 THIS HON’BLE NGT CANNOT HAVE POWERS OF JUDICIAL REVIEW MAKING COMMENTS ON LEGALITY AND VALIDITY OF LETTER DATED 30.01.2019,

“RESEARCH PAPER” ETC. TO LAWFUL AND UNLAWFUL AND THIS HAS TO BE DECIDED BY THE APPELLANT COURT IN THEIR JURISDICTION IF CIVIL APPEAL WILL BE FILED:

That the PP is seeking the judgment/Order of this Hon’ble NGT on the legality and validity of Letter submitted “Research Paper” for “Damage Assessment” in the violation cases reported under MoEFCC Notification, 14.03.2017. However, Hon’ble Supreme Court in its judgment dated 18.02.2019 in Civil Appeal Nos.4763-4764 OF 2013 at Para No. 42 (Internal Page No. 73-74) of the judgment have clarified that the Hon’ble NGT have no powers of **Judicial Review**.

“.....For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by the NGT. Following the judgment in BSNL (supra), we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country.”

PART-E

- 5. STAND OF SEIAA:** That the SEIAA is failed to file its final stand since filing of this Review to till date and because of this, Respondent No. 1 herein and Appellant in Appeal No. 68/2019 cannot complete his filing of reply affidavit.

PART-F

- 6. CASE LAW ON BEHALF OF THE R-1-MR. VISHAL A.**

SHAH: That the Respondent No. 1 would like to rely on the following judgments

| Sr. | Judgment | Para & Page |
|-----|--|-------------|
| 1. | (1968) 1 SCR 111, Sant Ram Sharma Vs. State Of Rajasthan & Ors. #Executive instructions in consonance with the statutory provisions to fill-up gaps have legal force. | ¶7; P@ |
| 2. | Civil Appeal Nos.4763-4764 OF 2013 dated 18.02.2019 #NGT have no powers of Judicial Review ; Internal P@73-74 | ¶42; P@ |
| 3. | Civil Appeals No. 5503-04 Of 2022 Arising Out Of Petitions For Special Leave To Appeal (Civil) No. 9602-03 OF 2022 dated 18.08.2022 #Error apparent on face of record, New documents/ new evidence not in knowledge of party #Abuse of process of law | ¶35-36; P@ |
| 4. | Review Petition (Civil) No.526 Of 2023 In Civil Appeal No.6990 Of 2014 Date: 16.05.2024 #Review Jurisdiction #Review maintainable #Review not maintainable | ¶12; P@ |

PART-G

7. REQUEST/SUGGESTIONS ON BEHALF OF R-1-VISHAL SHAH SEEKING RELIEFS/ DIRECTIONS/ ORDERS:

This Hon'ble NGT may kindly dismiss this Review Application as this Review is abuse of process of law and not maintainable as it does not make a case of error on face of record and actual its lame attempt of opening the case for rehearing, which is not permissible in the eyes of

law.

8. Hence this preliminary reply on behalf of the Respondent No.1-Mr. Vishal Arinjay Shah i.e. Appellant in Appeal No. 68/2019(WZ).

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

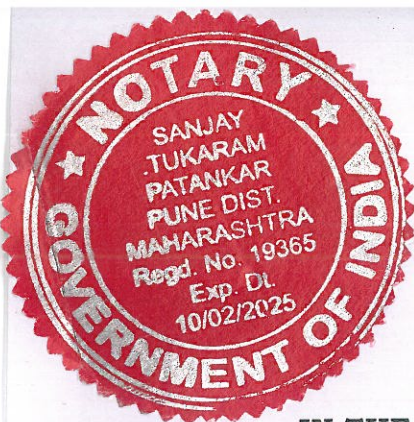
Date: _____.09.2024



DEPONENT
(VISHAL ARINJAY SHAH)



ADVOCATE FOR RESPONDENT NO. 1



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
REVIEW PETITION NO. 9/2023

IN
APPEAL NO. 68/2019 (WZ)

IN THE MATTER OF:

M/s GRENESIIS CONSTRO PVT. LTD.

...PETITIONER

VERSUS

MR. VISHAL ARINJAY SHAH & ORS.

...RESPONDENTS

AFFIDAVIT IN SUPPORT OF PRELIMINARY REPLY ON BEHALF
OF R-1-MR. VISHAL ARINJAY SHAH (APPELLANT IN APPEAL NO.
68/2019)

I, Vishal Shah S/o Arinjay Shah Aged: Adult, Occupation: Self-Business, R/at: Manorama, S. No. 39, Manik Baug, Sinhagad Road, Pune-411051, do hereby solemnly affirm and state on oath as follows:

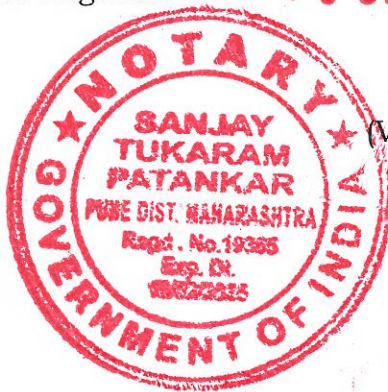
1. I state that I am Respondent No. 1 here in this Review Application and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I state that the Preliminary Reply to the Review Application, have been drafted under my instructions and that the facts stated therein are true to the best of my knowledge and belief.
3. I state that the Annexures to the Preliminary Reply are true copies of their respective originals.

18 SEP 2024

DEPONENT
(VISHAL ARINJAY SHAH)

IDENTIFIED BY ME

SHWRAJ P. KADAM
ADVOCATE



NOTED AND REGISTERED
AT SR. NO. 1350/2024
DATE 18/09/2024



BEFORE ME

SANJAY TUKARAM PATANKAR
NOTARY, GOVT. OF INDIA
PUNE DIST. MAHARASHTRA
Regd. No 19365 Exp. Dt.10/02/2025

18 SEP 2024

(1968) 1 SCR 111 : AIR 1967 SC 1910 : (1968) 2 LLJ 830

In the Supreme Court of India

(BEFORE K.N. WANCHOO, C.J. AND R.S. BACHAWAT, V. RAMASWAMI (I), G.K. MITTER AND K.S. HEGDE, JJ.)

SANT RAM SHARMA ... Appellant;

Versus

STATE OF RAJASTHAN AND OTHERS ... Respondents.

Writ Petition No. 182 of 1966*, decided on August 7, 1967

Advocates who appeared in this case :

N.C. Chatterjee, Senior Advocate (K.B. Rohtagi, Dr L.M. Singhvi and S. Balakrishnan, Advocates, with him), for the Petitioner;

C.B. Agarwala, Senior Advocate and G.C. Kasliwal, Advocate-General for the State of Rajasthan, (Indu Soni and K. Baldev Mehta, Advocates, with them), for Respondent 1;

N.S. Bindra, Senior Advocate (A.S. Nambiar and R.N. Sachthey, Advocates, with him), for Respondent 2;

K. Baldev Mehta and Indu Soni, Advocates, for Respondents 3 and 4.

The Judgment of the Court was delivered by

V. RAMASWAMI (I), J.— The petitioner, Shri Sant Ram Sharma has obtained a rule from this Court calling upon the respondents to show cause why a writ under Article 32 of the Constitution should not be granted for quashing two orders of the State of Rajasthan, one dated March 22, 1966 whereby Shri Hanuman Sharma, Respondent 3 was promoted as Inspector General of Police, Rajasthan superseding the petitioner, and the other dated April 28, 1966 promoting Shri Sultan Singh, Respondent 4 as Additional Inspector General of Police superseding the petitioner. The petitioner has also prayed for a writ in the nature of mandamus commanding Respondents 1 & 2 to consider the petitioner's claim as the senior-most officer in Rajasthan to be promoted to the post of Inspector General of Police. Cause has been shown by Mr C.B. Agarwala on behalf of the State of Rajasthan and the other respondents to whom notice of the rule was ordered to be given.

2. The petitioner, Shri Sant Ram Sharma was appointed to the Indian Police Service on June 10, 1952. On September 8, 1954 by a notification of the Ministry of Home Affairs, Government of India, the Indian Police Service (Regulation of Seniority) Rules, 1954 came into force. Rule 6 of the said Rules required that a Gradation List of all Police Officers in the State should be maintained to ascertain their respective seniority. Accordingly, a Gradation List was prepared by the State of Rajasthan in August, 1955. In this Gradation List, the position of the petitioner was 5th. Shri Hanuman Sharma was shown as occupying the 7th position, Shri Sultan Singh stood 14th and the position of Shri Ganesh Singh was 17th. Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 required that every officer shall be assigned a year the allotment in accordance with the provisions contained in that rule. According to this rule the year of allotment of the petitioner was 1942, that of Respondent 3, Shri Hanuman Sharma 1943, and that of Respondent 4, Shri Sultan Singh 1945. In April 1955 the question of confirmation of the petitioner and of the three other officers, namely, Shri Hanuman Sharma, Shri Sultan Singh and Shri Ganesh Singh to the rank of Deputy Inspector General of Police was taken up. It was decided by the State of Rajasthan that the petitioner should be superseded and the three officers, Shri

Hanuman Sharma, Shri Sultan Singh and Shri Ganesh Singh should be confirmed in the rank of Deputy Inspector General of Police. The case of the petitioner is that in June, 1959 Shri Hanuman Sharma was promoted as Special Inspector-General of Police and on June 2, 1961 the post was encadred and Shri Hanuman Sharma was confirmed in that post. It appears that, on March 22, 1966, Shri Hanuman Sharma was promoted as Inspector General of Police, Rajasthan and on April 28, 1966 Shri Sultan Singh was promoted as Additional Inspector General of Police superseding the petitioner. The notifications of the State of Rajasthan dated March 22, 1966 and April 28, 1966 are annexures 'G' and 'H' to the writ petition. The contention of the petitioner is that he was entitled, as a matter of right, to be appointed as Deputy Inspector General of Police in 1955 and as Inspector General of Police in 1966 as he was shown as the senior-most officer in the Gradation List and the orders of the State of Rajasthan in annexures 'G' and 'H' are in violation of the provisions of Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954. It was also contended for the petitioner that his claim was not considered in 1955 at the time of confirmation of Respondents 3 and 4 as Deputy Inspector General of Police or in 1966 at the time of promotion of Respondents 3 and 4 to the posts of Inspector General of Police and Additional Inspector General of Police respectively. It was therefore said that the fundamental rights of the petitioner under Articles 14 and 16 have been violated and the orders of the State of Rajasthan dated March 22, 1966 and April 28, 1966 should be quashed by the grant of a writ in the nature of certiorari with a direction to the 1st respondent to consider the petitioner's claim afresh for being promoted to the post of Inspector General of Police.

3. The allegations of the petitioner have been controverted by the State of Rajasthan in its counter-affidavit. It was said that the posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police are selection posts which carry pay above the time-scale of pay and for appointment to these selection-posts an officer is chosen not merely on the basis of his rank in the Gradation List but on the record of his merit and past experience in the Police Department. The petitioner was appointed to the Indian Police Service on June 10, 1952 but even before that date Shri Hanuman Sharma, Shri Sultan Singh and Shri Ganesh Singh were appointed to the Indian Police Service in 1951 and they were already officiating as Deputy Inspector General of Police. Shri Hanuman Sharma and Shri Sultan Singh were officiating since April 22, 1952 and Shri Ganesh Singh since May 17, 1952. The petitioner was confirmed in the Senior Scale of Indian Police Service on June 10, 1954 but the other three officers were confirmed in the Senior Scale of the Indian Police Service on March 24, 1953 i.e. more than a year before the confirmation of the petitioner. When the question of confirmation of the officers to the post of Deputy Inspector General of Police arose in 1955, the State of Rajasthan considered the comparative merit of all the officers concerned including that of the petitioner and it was decided to confirm Respondents 3 & 4 and Shri Ganesh Singh as Deputy Inspector General of Police in preference to the petitioner in view of their outstanding record and merit and experience in the Police Department. As regards the promotion of Respondent 3 to the post of Inspector General of Police and of Respondent 4 to the post of Additional Inspector General of Police, it was stated that the petitioner had no right to the selection posts carrying pay above the time-scale of pay and that the appointment to those posts was at the discretion of the State of Rajasthan which decided the question after taking into consideration the merit of all the officers concerned. It was further stated that the power of appointment was not exercised arbitrarily but was exercised in the interest of efficiency and good administration and that the promotion to selection posts was on the basis of merit alone and it was only in a case where the merit of the two officers was equal that the seniority of one officer in the Gradation List might tilt the case in his favour. It was

denied by the respondent that there was any violation of the Indian Police Service (Regulation of Seniority) Rules, 1954.

4. The question for determination in this case is whether the petitioner was entitled, as of right, to be promoted as Deputy Inspector General of Police in 1955 or as Inspector General of Police in 1966 merely on the ground that his name stood first in the Gradation List prepared under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954.

5. Sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951) empowers the Central Government to make rules for the regulation of recruitment and conditions of service of persons appointed to an All-India Service. In exercise of this power the Central Government framed the Indian Police Service (Regulation of Seniority) Rules, 1954. Rule 2(a) provides that "Cadre" means "an Indian Police Service Cadre constituted in accordance with Rule 3 of the Indian Police Service (Cadre) Rules, 1954". Rule 2(d) defines "gradation list" to mean "a gradation list prepared under Rule 6". Rule 2(g) defines a "senior post" to mean "a post included under Item 1 of each Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 or any post declared equivalent thereto by the State Government concerned". Rule 3 deals with the assignment of year of allotment and reads as follows:

"(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

(2) The year of allotment of an officer in service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules:

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be—

(a) where the officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held;

(b) where the officer is appointed to the Service by promotion in accordance with Rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with Rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with Rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with Rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned;

*

*

*"

Rule 4 relates to seniority of officers and reads as follows:

"4.(2) The seniority of officers in service at the commencement of these rules shall be as has been determined or may be determined by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules:

Provided that where the seniority of an officer appointed in accordance with Rule 9 of the Recruitment Rules has not been determined before the commencement of these rules, his seniority shall be determined in accordance with the provision in sub-rule (3).

* * *

Rule 5 deals with seniority of officers placed in List II and List III by the Special Recruitment Board and Rule 5-A deals with seniority of officers appointed under the Indian Police Service (Special Recruitment) Regulations, 1957. Rule 6 states:

"6. *Gradation List.*— There shall be prepared every year for each State Cadre and Joint Cadre a gradation list consisting of the names of all officers born on that Cadre arranged in order of seniority in accordance with the provisions of Rules 4, 5, 5-A and 7".

6. On behalf of the petitioner Mr N.C. Chatterjee put forward the argument that Rule 6 required that a gradation list should be prepared strictly in order of seniority in accordance with the provisions of Rules 4, 5, 5-A and 7 and it is not open to the State of Rajasthan to disregard the claim of the petitioner who stood first in the Gradation List and to promote Respondents 3 & 4 to the rank of Deputy Inspector General of Police. We are unable to accept the argument put forward on behalf of the petitioner as correct. It is apparent from a perusal of Rules 3 and 8 of the Indian Police Service (Pay) Rules, 1954 read with Part B of Schedule III of those Rules that the posts of Deputy Inspector General of Police, Additional Inspector General of Police and Inspector General of Police in Rajasthan State are selection posts and outside the junior and senior time-scales of pay. Rule 2(a) provides that 'Cadre' and 'Cadre post' shall have the meanings respectively assigned to them in the Indian Police Service (Cadre) Rules, 1954. Rule 3 prescribes the time-scales of pay admissible to members of the Service and reads as follows:

"3. *Time — scales of pay.* The time-scales of pay admissible to a member of the Service shall be as follows:

Junior Scale: Rs 350 - 350 - 380 - 380 - 30 - 590 — E.B. - 30 - 770 - 40 - 850 (19 years).

Senior Scale: Rs 600 (6th year or under) - 40 — 1000—1000 - 1050 - 1050 - 1100 - 1100 - 1.150(22) years.

Selection Grade—Rs 1,250.

Provided that a member of the Service holding a post in the senior time-scale may be appointed to a post in the selection grade and where he is so appointed, he shall be entitled to draw pay of the post in the selection grade:

Provided further that a member of the Service to whom any other time-scale of pay was admissible under any order in force immediately before the commencement of these rules shall continue to draw pay in that scale".

The rule prescribes two scales of pay—Junior Scale and Senior Scale — in addition to the Selection Grade which is Rs 1250. Rule 8 deals with pay of officers holding posts enumerated in Schedule III and states as follows:

"Any member of the Service appointed to hold a post specified in Schedule III, shall, for so long as he holds that post, be entitled to draw the pay indicated for that post in the said Schedule:

Provided that no member of the Service shall at any time draw pay less than that which he is entitled to draw under Rule 4 and Rule 5:

Provided further that a member of the Service to whom any other special pay or pay above the time-scale was admissible under any order in force immediately before the commencement of these rules for holding posts specified in Schedule III shall, for so long as he holds the post, continue to draw the same pay".

The posts in the Schedule are (a) posts carrying pay above the time-scale pay of the Indian Police Service under the State Governments, specified in section A, (b) posts carrying pay in the senior time-scale of the Indian Police Service under the State

Governments including posts carrying special pay (in addition to pay in the time-scale) specified in section B and (c) posts carrying pay above the time-scale or special pay in addition to pay in the time-scale, under the Central Government held by members of the Service, specified in section C. In category (a) so far as the State of Rajasthan is concerned the posts of Inspector General of Police, Additional Inspector General of Police, and Deputy Inspector General of Police are shown as Selection Grade posts carrying pay above the time-scales of pay. It is manifest therefore, on a perusal of Rules 3 and 8 read with Part B of Schedule III, that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan are Selection posts and outside the junior and senior time-scales of pay mentioned in Rule 3. This conclusion is also supported by para 1 of Part B of Schedule III which states that "the number of posts in the selection grade in a State Cadre shall be equal to twenty per centum of the total number of senior posts borne on that cadre reduced by the number of posts carrying pay above the time-scale". In support of his contention Mr N.C. Chatterjee referred to the decision of this Court in *P.C. Wadhwa v. Union of India*¹. But the ratio of that case has no bearing on the question presented for determination in the present case. The question involved in that case was whether under the relevant rules governing the Indian Police Service, a member thereof was entitled as of right to be promoted to a post in the senior scale as and when a vacancy (except a vacancy in the promotion quota) arose therein and no one senior to him was available for that post. It was held by the majority of the learned Judges that a consideration of the various rules would make it clear beyond doubt that a person in the junior time-scale of the service is as much a cadre officer as one holding a post in the senior time-scale or a post above the time-scale and the whole scheme of the rules indicated that a person in the junior scale of pay had a right to hold a post on the senior scale of pay subject to the availability of a post in the senior scale of pay and his seniority in the junior scale of pay. At p. 627 of the Report Mudholkar, J. in the course of his judgment expressly observed "we should not be understood as saying that this right extends to the appointment to a post carrying pay above time-scale of pay or a post carrying a special pay, and the rules governing appointment to such posts were not placed before us". The decision of this Court in *P.C. Wadhwa v. Union of India*¹ is therefore of no assistance to the petitioner and for the reasons we have already given, we are of the opinion that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. The administrative practice with regard to selection posts is laid down in a letter of the Government of India dated July 31, August 3, 1954 as follows:

"If a person, though senior in the gradation list, is appointed to the selection post later than his junior, this is presumably because he is superseded as a matter of selection. If this is so, it would certainly not be unjustified to regard the officer so

selected earlier, though junior in the gradation list, as senior to the other officer, as far as the selection posts are concerned”.

Another communication dated June 1, 1955 states:

“All super-time scale posts are selection posts and appointment thereto need not follow the order of seniority.”

In another letter No. 7/6/56-AIS(1) dated October 5, 1956 the Government of India has reiterated the principle of promotion to selection grade posts as follows:

“I am directed to say that the Government of India have recently had occasion to consider the question of the principles to be followed in the matter of promotion of I.P.S. Officers to the selection Grade when some of the officers junior in service were approved and given officiating chances in such selection grades earlier than their seniors. It is, of course, a well established principle that promotions to the Selection Grade or a selection post is to be based primarily on merit and not seniority in the service....”

7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

8. In *B.N. Nagarajan v. State of Mysore*² it was pointed out by this Court that it is not obligatory under the proviso to Article 309 of the Constitution to make rules of recruitment, etc., before a service can be constituted or a post created or filled, and, secondly, the State Government has executive power, in relation to all matters with respect to which the legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of Schedule 7, List II. Entry 41, State Public Services, and there is nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. A similar view was taken by this Court in *T. Cajee v. U. Jormanik Siem*³ where Wanchoo, J., as he then was, who delivered judgment on behalf of the majority, observed as follows at pp. 762-64 of the Report:

“The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on para 3(1)(g) of the Schedule, which lays down that the District Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen.

The High Court seems to be of the view that until such a law is made there could be no power to make laws with respect to the of appointment of a Chief and Headmen. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para 3(1)(g) than is justified by its language para 3(1) is in fact something like a legislative list and enumerates the

subjects on which the District Council is competent to make laws. Under para 3(1)(g), it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect.... Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para 19(1)(b) or till the District Council passed laws under para 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para 19(1)(b) or laws are passed under para 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under para 3(1)(g) cannot be sustained."

9. We pass on to consider the next contention of Mr N.C. Chatterjee that if the executive Government is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Article 309, there will be a violation of Articles 14 and 16 because the appointments would be arbitrary and capricious. In our view, there is no substance in this contention of the petitioner. If the State of Rajasthan had considered the case of the petitioner alongwith the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Articles 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts was actually made. It was said by Mr C.B. Agarwala on behalf of the respondents that an objective evaluation of the merit of the officers is made each year and promotion is made on scrutiny of the record-sheets dealing with the competence, efficiency and experience of the officers concerned. In the present case, there is no specific allegation by the petitioner in the writ petition that his case was not considered alongwith Respondents 3 & 4 at the time of promotion to the posts of Deputy Inspector General of Police in 1955 or to the rank of Inspector General of Police or Additional Inspector General of Police in 1966. There was, however, a vague suggestion made by the petitioner in para 68 of his rejoinder petition dated July 17, 1967 that "the State Government could not have possibly considered my case, as they considered and even in this counter-affidavit consider Shri Hanuman Sharma and Shri Sultan Singh senior to me by the new type of seniority they have invented for their benefit". Even though there is no specific allegation by the petitioner that there was no consideration of his case, Respondent 1 has definitely asserted in paras 23, 25, 40 and 44 of the counter-affidavit that at the time of promotion of Respondents 3 & 4 to the selection posts of Deputy Inspector General of Police and of Inspector General of Police the case of the petitioner was considered. We are therefore of the opinion that the petitioner is unable to substantiate his argument that there was no consideration of

his case at the time of promotion of Respondents 3 & 4 to the selection posts. We must therefore proceed on the footing that Respondent 1 had considered the case of the petitioner and taken into account the record, experience and merit of the petitioner at the time of the promotion of Respondents 3 & 4 to the selection grade posts. It is therefore not possible to accept the argument of Mr N.C. Chatterjee that there was any violation of the constitutional guarantee under Articles 14 and 16 of the Constitution in the present case. Mr N.C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation opens the door to the abuses of nepotism and favouritism, and so, there was a violation of the constitutional guarantee under Articles 14 and 16 of the Constitution. We are unable to accept this argument as well-founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy. In this connection Leonard D. White has stated as follows:

“The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment.... Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true.”

(Introduction to the Study of Public Administration, 4th Edn., pp. 380-83).

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr N.C. Chatterjee that this procedure violates, in any way, the guarantee under Articles 14 and 16 of the Constitution.

10. For the reasons expressed we hold that the petitioner has been unable to make out a case for the grant of a writ under Article 32 of the Constitution. The petition accordingly fails and is dismissed. There will be no order as to costs in the

circumstances of this case.

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* (Under Article 32 of the Constitution of India for enforcement of the fundamental rights).

¹ (1964) 4 SCR 588

² AIR 1964 SC 1942

³ (1961) 1 SCR 750

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.4763-4764 OF 2013

TAMIL NADU POLLUTION
CONTROL BOARD

... APPELLANT(S)

VERSUS

STERLITE INDUSTRIES (I) LTD. & ORS.

... RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 8773-8774 OF 2013

CIVIL APPEAL NOS. 9542-9543 OF 2013

CIVIL APPEAL NO. 5782 OF 2014

CIVIL APPEAL NOS. 1552-1554 OF 2019

CIVIL APPEAL NO. 23 OF 2019

CIVIL APPEAL NO. 1582 OF 2019

J U D G M E N T

R.F. NARIMAN, J.

1. The present appeals arise out of orders that have been passed by the National Green Tribunal [“NGT”] dated 31.05.2013, 08.08.2013,

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NATARAJAN
Date: 2016.02.18
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Reason: 

and 15.12.2018. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The respondent, Sterlite Industries (India) Ltd. / Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the respondent received a No-Objection Certificate [**“NOC”**] from the Tamil Nadu Pollution Control Board [**“TNPCB”**] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change [**“MoEF”**] followed on 16.01.1995. On 17.05.1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 [**“Air Act”**] and Water (Prevention and Control of Pollution) Act, 1974 [**“Water Act”**] on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos.15501-15503/1996,

5769/1997, and 16961/1998. On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT

on 31.05.2013, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos.4763-4764 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act / the National Green Tribunal Act, 2010 [**“NGT Act”**]. This ground of maintainability was decided against the appellants by the impugned order dated 08.08.2013.

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was

made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions. Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No.7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This Writ Petition was disposed of by an order dated 04.04.2018 with a direction to consider the respondent's application. On 09.04.2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the respondent filed Appeal Nos.36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 06.06.2018, the following order was passed:

“APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30
& 31 / 2018 AND APPEALS 36 & 37 / 2018:

Heard.

In view of the Government Order passed by the Government of Tamilnadu in G.O. Ms. No: 72, Environment & Forests (EC-3) Department Dated: 28.5.2018, directing the Tamilnadu Pollution Control Board to close the plant permanently, we feel it is not

appropriate to hear the Appeals and decide the issue at this juncture.

Hence the Appeals and applications are adjourned to 10.7.2018.”

On 10.07.2018, the matter was further adjourned as follows:

“APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

In view of the remarks made in the adjudication proceedings on 6.6.2018 and as the position is same now, the Appeals and Applications are adjourned to 21.8.2018.”

Finally, on 18.12.2018, i.e., three days after the impugned order was passed by the NGT on 15.12.2018, an order passed by the appellate authority was as follows:

“APPLICATIONS 28, 29, 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

Ms. Janani, counsel for the appellant and Mr. V. Vasanthakumar, counsel for the respondent-Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

Counsel for the appellant seeks permission to withdraw the Appeals. She has also filed a memo to that effect.

In view of the order passed by the Hon’ble National Green Tribunal, Principal Bench, New Delhi on 15.12.2018 in Appeal No. 87 of 2018 setting aside the impugned order dated 9.4.2018 which is subject matter of these appeals pending before this Appellate

Authority, the Appeals have become infructuous and hence they are closed.”

5. On 12.04.2018, an order was passed by the TNPCB under Section 33A of the Water Act and Section 31A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the respondent's unit and disconnect power supply to it. Finally, on 28.05.2018, an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

“It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s.Vedanta Limited, Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9.4.2018. Subsequently, on 23.5.2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24.5.2018.

2. Under Article 48-A of the Constitution,

“the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

3. Under sections, 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution

Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently.”

6. On the same date, the TNPCB issued a letter to the District Collector, *inter alia*, directing him to seal the respondent's unit. These six orders became the subject matter of a composite Appeal No. 87 of 2018 under Section 16 of the NGT Act.

7. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18.06.2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 09.07.2018.

8. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17.08.2018, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20.08.2018, the NGT constituted a Committee to go into the material produced by the parties to the Civil Appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board

[“CPCB”] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10.09.2018, by stating:

“By our order dated 17.08.2018, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

Since our order is not referred to in the order dated 20.08.2018 passed by the NGT, we need only to state that once the Committee’s report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17.08.2018.

xxx xxx xxx”

A review petition that was filed against this order was dismissed.

9. The Committee constituted by the NGT then inspected the site on various dates in September/October, 2018, and heard all concerned parties as well as intervenors. It then came out with a detailed Enquiry Report dated 20.11.2018, in which it concluded as follows:

“On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the intervenors and, upon consideration of the issues raised, the Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the principles of natural justice.

No notice or opportunity of hearing was given to the appellant.

2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.
3. Other issues raised also does not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.
4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the committee is of the opinion that the following directions may be issued.
 - a) As per condition No.44 of the Consent Order dated 19-04-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.
 - b) The sampling of the above should be taken in the presence of an official from TNPCB.
 - c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per condition no.43 of Consent Order dated 19-04-2005.
 - d) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.

- e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds.
- f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of copper slag in its dump yard.
- g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of gypsum in its dump yard.
- h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB.

- i) Application of the Company for obtaining valid authorization for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules, 2016 should be disposed of by the TNPCB in a time bound manner.
- j) Even though there is no requirement of analyzing the air samples through an accredited laboratory nonetheless a direction should be issued to the appellant that they will conduct a periodical survey for ambient air quality/ noise level/ stack emission through accredited laboratories of MoEF&CC/NABL and furnish such report to the TNPCB.
- k) The appellant company should be directed that they shall develop a green belt of 25 metres width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.
- l) The State of Tamil Nadu/ TNPCB should collect data from their primary health centres and Govt. Hospitals to monitor the various ailments that are being complaint of by the inhabitants living in and around the factory premises.
- m) The State Government should specify the module to the appellant for conducting the proper and designed health monitoring study.
- n) The direction no. (iii) on “Source Apportionment Study” and direction no. (ix) on “conducting a study on health hazards” passed by the NGT in its judgment dated 8/8/2013 in Appeal 58 of 2013 should be carried out by the Tamil

Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

- o) The appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time bound manner as per the conditions laid down in the guidelines given by CPCB in October, 2014.
- p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organization approved by the TNPCB as per condition No.15 of the Consent Order dated 19/04/2005.
- q) Direction should be given to the TNPCB as well as to the appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.
- r) Directions/ regulation may be framed for import of high grade copper ore.
- s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of the Tuticorin with regard to emission of SO₂.
- t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.
- u) The transportation of copper ore concentrate from the port to the factory

premises should be done in a closed conveyance or through a pipe conveyor system.

- v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of Ambient Air Quality/ Stack emissions/ Fugitive emissions/ ground water quality/ surface water quality/ soil quality/ slag analysis through third party and report shall be furnished to the concerned regulatory agencies.
- w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.
- x) TNPCB should be directed to commission “Regional Environmental Impact Assessment Study” in and around Tuticorin District by engaging a reputed national agency.
- y) CPCB recommendations as contained in the order of NGT, dated 20.08.2018 to be complied with.”

Both the respondent as well as the appellants made their detailed comments on the Committee’s report. The NGT then heard final arguments and dictated the impugned order on 15.12.2018, in which it substantially accepted the Committee’s recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as

the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15.12.2018 is without jurisdiction.

10. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22.01.2019, by which the respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

11. We have heard wide-ranging arguments from learned counsel appearing on behalf of all the parties as well as the intervenors, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

12. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 09.04.2018 was concerned, an appeal was pending before the appellate authority, as a result of

which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12.04.2018, 23.05.2018, and 28.05.2018, made under Section 33A of the Water Act and Section 31A of the Air Act, were composite orders issued. As orders under Section 31A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28.05.2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a Civil Court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some of our judgments as well as statutes and judgments of the English Courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme

of the Water Act, Air Act, and NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticize the order passed by the NGT dated 08.08.2013 on maintainability. According to him, no doctrine of necessity could be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second appellate tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

13. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the

relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 09.04.2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33A and 31A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33A of the Water Act, and even if there is no appeal provided under Section 31A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only

procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as the attack made upon the order dated 28.05.2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is *non est* and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that

this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in **L. Chandra Kumar v. Union of India and Ors.**, (1997) 3 SCC 261 [**L. Chandra Kumar**], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

14. Having heard learned counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

15. The relevant Sections of the Water Act are as follows:

“18. Powers to give directions.—(1) In the performance of its functions under this Act—

- (a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and
- (b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

xxx xxx xxx”

“25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within

the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry,

operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of

four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Sections 27 and 30,—

- (a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;
- (b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

“26. Provision regarding existing discharge of sewage or trade effluent.—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such

date as may be specified by the State Government by notification in this behalf in the Official Gazette.”

“27. Refusal or withdrawal of consent by State Board.—(1) A State Board shall not grant its consent under sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

(2) A State Board may from time to time review—

- (a) any condition imposed under Section 25 or Section 26 and may serve on the person to whom a consent under Section 25 or Section 26 is granted a notice making any reasonable variation of or revoking any such condition;
- (b) the refusal of any consent referred to in sub-section (1) of Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

(3) Any condition imposed under Section 25 or Section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.”

“28. Appeals.—(1) Any person aggrieved by an order made by the State Board under Section 25, Section 26 or Section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the

appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,—

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.”

“29. Revision.—(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under Section 25, Section 26 or Section 27 for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this sub-section without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter.

(2) The State Government shall not revise any order made under Section 25, Section 26 or Section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority.”

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“33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

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

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

“33B. Appeal to National Green Tribunal.—Any person aggrieved by,—

- (a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or
- (b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or
- (c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

16. The relevant Sections of the Air Act are as follows:

“21. Restrictions on use of certain industrial plants.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within

the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a

reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- (v) such other conditions as the State Board may specify in this behalf; and
- (vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or

- (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
- (c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.”

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“31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.”

“31A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.”

“31B. Appeal to National Green Tribunal.—Any person aggrieved by an order or decision of the Appellate Authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

17. The relevant Sections of the NGT Act are as follows:

“2. Definitions.—(1) In this Act, unless the context otherwise requires,—

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(m) “substantial question relating to environment” shall include an instance where,—

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

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

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

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

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

xxx xxx xxx”

“14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a

substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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

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

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

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

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

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

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

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

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

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

“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

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

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

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

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

by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.”

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

18. It is important now to advert to both the orders dated 08.08.2013 and 15.12.2018, insofar as they deal with the maintainability of the appeals before them.

19. By the judgment of the NGT dated 08.08.2013, the NGT disposed of the plea on maintainability as follows:

“62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant-company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant-company, particularly keeping in view the emergent

situation created by issuance of the order dated 29th March, 2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant-company had been directed to be shut down and the appellant-company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant-company has also placed its reliance on Section 31B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant-company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Union of India*, (2010) 11 SCC 557 where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in the case of *Manohar Lal* (supra).

63. We are unable to contribute ourselves to the contention raised that a direction passed under

Section 31A of the Air Act is not covered under the expression 'order' used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. 'Direction' itself means an order; an instruction how to proceed, like the judge's direction to the jury, while 'Order' is defined as a command, direction or instruction. This is how the *Black's Law Dictionary*, 9th Edition, refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three Member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short 'the NGT Act') even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

20. Insofar as the judgment dated 15.12.2018 is concerned, the NGT, on maintainability, held as follows:

44. It is undisputed that this Tribunal is an Appellate Authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12.04.2018, 23.05.2018 and 28.05.2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the Appellate Authority by this Tribunal. As already noted, the Appellate Authority has declined to proceed with the matter. The grounds in the impugned orders dated 09.04.2018, 12.04.2018, 23.05.2018 and 28.05.2018 are identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the Appellate Authority is also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the respondents are distinguishable. Unlike *Educanti Kistamma v. Deokar's Distillery* [(2003) 5 SCC 669], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

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48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under

challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the Appellate Authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the appellant any judicial remedy in the matter.”

(I) RE: ORDER DATED 09.04.2018

21. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33B(a) of the said Act, if a person is aggrieved by an

order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31B of the Air Act and Section 16(f) of the NGT Act.

22. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeal Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22.06.2018 before the NGT *inter alia* against the order of refusal of consent to operate dated 09.04.2018. Shri Sundaram, however, argued before us that the order dated 06.06.2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28.05.2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the

appeals could not be decided at this juncture and were hence adjourned to 10.07.2018. The said appeals on 10.07.2018 were further adjourned, and it is only on 18.12.2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15.12.2018 in which it had set aside the order dated 09.04.2018.

23. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 09.04.2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negated as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the

proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 09.04.2018.

24. At this point, it is important to advert to a few judgments of this Court. In **Kundur Rudrappa v. Mysore Revenue Appellate Tribunal and Ors.**, (1975) 2 SCC 411, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated:

“4. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

“64. (1)(a) Any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him

. . .

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.”

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. Appeal is a creature of the statute. There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing the writ application of the appellant which ought to have been allowed.”

(emphasis supplied)

25. Similarly, in a concurring judgment of Sinha, J., in **Cellular Operators Association of India and Ors. v. Union of India and Ors.**, (2003) 3 SCC 186, the learned Judge observed:

“27. TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as

also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.”

(emphasis supplied)

26. In **B. Himmatlal Agrawal v. Competition Commission of India**, Civil Appeal No. 5029/2018 [decided on 18.05.2018], this Court, while dealing with Section 53B of the Competition Act, 2002 held:

“7. The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Subsection (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an

opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.”

(emphasis supplied)

27. In **Raja Soap Factory v. S.P. Shantharaj**, (1965) 2 SCR 800, the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held:

“The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction: it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of the Trade and Merchandise Marks Act

43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute of under its constitution with that jurisdiction was incompetent to entertain a passing off action.

But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a Court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance.”

(at page 802)

28. In **Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Ors.**, (1997) 4 SCC 452, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In

repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held:

“10. The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection.....”

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“12. But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may be added that the Union of India

could have used the mode set out in Section 129-D, but it did not do so.”

29. In **Manohar Lal v. Ugrasen**, (2010) 11 SCC 557, one of the questions involved, under sub-paragraph 2(a) of the judgment, was as follows:

“2. In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?

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After reviewing a number of cases, this Court then concluded:

“23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.”

30. In **Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner**, (2013) 16 SCC 1, appeals lay to the Tribunal constituted under the Employees’ Provident Funds and Miscellaneous

Provisions Act, 1952, under Section 7-I of the Act. Whereas appeals lay against orders passed under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held:

“20. On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar* [(1974) 2 SCC 393], *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad* [(1999) 4 SCC 468], *State of Haryana v. Maruti Udyog Ltd.* [(2000) 7 SCC 348], *Super Cassettes Industries Ltd. v. State of U.P.* [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280], *Raj Kumar*

Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712], *Competition Commission of India v. SAIL* [(2010) 10 SCC 744].”

In paragraph 21, this Court further went on to hold that in case an order under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal under Section 7-I, as interest is only parasitic on the principal sum due under Section 7-A. However, if an independent order is passed under Section 7-Q for interest alone, the same was held to be not appealable.

31. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act

or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

32. In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the Trial Judge in the following terms:

“12. Grant of certificate by trial judge.

(1) Where on the application of any of the parties to any proceedings to which this section applies the judge is satisfied—

- (a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings, and
- (b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...
- (c)

the judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

(2) This section applies to any civil proceedings in the High Court which are either—

- (a) proceedings before a single judge of the High Court (including a person acting as such a judge under section 3 of the Judicature Act 1925), or
- (b)
- (c) proceedings before a Divisional Court.

(3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

- (a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or
- (b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the

judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.

xxx xxx xxx”

33. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the U.K. are referred to as “leapfrog appeals” [see **S Franses Ltd. v. The Cavendish Hotel (London) Ltd.**, [2018] UKSC 62 (at paragraph 7)].

34. It is, therefore, clear that no such provisions, as are contained in the U.K. Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

(II) RE: ORDERS PASSED UNDER SECTION 33A OF THE WATER ACT AND SECTION 31A OF THE AIR ACT

35. We have referred to the orders dated 12.04.2018, 23.05.2018, and 28.05.2018 passed by the TNPCB under Sections 33A and 31A of the Water Act and Air Act respectively. At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air

Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33A of the Water Act are appealable to the NGT, directions issued under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal

being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a “direction” under Section 31A of the Air Act is nothing but an “order”, and would, therefore, be appealable as such under Section 31B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31A in Section 31B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, “directions” that are issued under Section 31A of the Air Act are of a different quality from “orders” referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under

the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, *inter alia*, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity *qua* any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyer’s Law Lexicon and Black’s Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited **Kanhiya Lal Omar v. R.K. Trivedi**, (1985) 4 SCC 678, and relied upon

paragraph 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a “direction” may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

36. Shri Sundaram then cited **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, (1984) 4 SCC 27. In this judgment, the High Court had struck down Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see paragraph 27]. It is in this context that this Court held:

“29. It is equally important that the Court should also, as far as possible, avoid any decision or

interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide an appeal where there is none in the guise of making an appellate system workable in practice.

37. Shri Sundaram then relied upon this Court’s judgments in **Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.**, (2016) 14 SCC 161 and **Allokam Peddabbayya v. Allahabad Bank**, (2017) 8 SCC 272 for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

38. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In **Garikapati Veeraya v. N. Subbiah Choudhury**, 1957 SCR 488, this Court held:

“From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at *the* date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so

provides expressly or by necessary
intendment and not otherwise.”

(at pp. 514-515)

This argument must, therefore, be rejected.

(III) RE: ORDER PASSED UNDER SECTION 18 OF THE WATER ACT

39. So far as the order dated 28.05.2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the Sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a Civil Court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being *non est*. It is settled that an administrative order, when made, does not bear the brand of invalidity

on its forehead, as has been held in **Smith v. East Elloe Rural District Council**, [1956] 1 All E.R. 855 (at page 871), which has been followed by this Court in **State of Punjab v. Gurdev Singh**, (1991) 4 SCC 1 (at page 6); **Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.**, (1997) 3 SCC 443 (at page 455); **Pune Municipal Corpn. v. State of Maharashtra**, (2007) 5 SCC 211 (at page 225); **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, (2011) 3 SCC 363 (at page 369); and **Kandla Port v. Hargovind Jasraj**, (2013) 3 SCC 182 (at page 193). Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or

27 of the Water Act. This argument of despair, therefore, must also be rejected.

40. Shri Sundaram then argued that this Court in **L. Chandra Kumar** (supra) made it clear that Tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly upon paragraphs 90 and 93 of the judgment in **L. Chandra Kumar** (supra). It is important to notice that **L. Chandra Kumar** (supra) pertained to a Tribunal that was set up under Article 323A of the Constitution of India. Under Article 323A(2)(d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the

appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State

Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

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“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.—On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.”

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either under Article 323A or Article 323B of the Constitution, but is a statutory

Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

41. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in **L. Chandra Kumar** (supra) has observed in paragraph 93 as follows:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be

unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

42. In **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.**, (2014) 3 SCC 222 [“**BSNL**”], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in **L. Chandra Kumar** (supra), this Court held:

“**108.** Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word

“orders”, sub-sections (3) and (4) thereof used the word “decision”. In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b).”

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“114. From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word “directions” used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words “direction”, “decision” or “order” used in Section 14(b) would

include regulations framed under Section 36, which are in the nature of subordinate legislation.”

xxx xxx xxx

“**123.** In *Union of India v. Madras Bar Assn.* [(2010) 11 SCC 1] and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.* [(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56 : (2012) 10 Scale 285], this Court applied the principles laid down in *L. Chandra Kumar case* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act.”

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a

High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in **Re: Special Reference**, (1965) 1 SCR 413, made in the following words:

“We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. “*Prima facie*”, says Halsbury, “no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury’s Laws of England*, vol. 9, p. 349]”.

(at page 499)

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by the NGT. Following the judgment in **BSNL** (supra), we are of the view that the NGT has no general power of

judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in **Wilfred v. Ministry of Environment and Forests** must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

43. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a

writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44. Equally, so far as the order dated 08.08.2013 is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

45. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 09.04.2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22.01.2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15.12.2018, and the order dated 29.03.2013, dealt with by the final judgment dated 08.08.2013, are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 09.04.2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the

case of challenge to the 09.04.2018 order of the TNPCB. The appeals are disposed of accordingly.

.....J.
(R.F. Nariman)

New Delhi
February 18, 2019

.....J.
(Navin Sinha)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NO. 5503-04 OF 2022
ARISING OUT OF
PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.9602-03 OF 2022

S. MADHUSUDHAN REDDY APPELLANT

Versus

V. NARAYANA REDDY AND OTHERS RESPONDENTS

ALONG WITH
CIVIL APPEAL NO.5505 OF 2022
ARISING OUT OF
PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.11290 OF 2022

S. NARSIMHA REDDY APPELLANT

Versus

V. NARAYANA REDDY AND OTHERS RESPONDENTS

J U D G M E N T

HIMA KOHLI, J.

1. Leave granted.
2. The present appeals are directed against a common judgment and order dated

Signature Not Verified

Digitally signed by
SATISH KUMAR ADAV
Date: 2022.03.18
17:05:40 IST
Reason:

18th April, 2022 passed by the learned Single Judge of the High Court for the State of

Telangana at Hyderabad, allowing the review petitions filed by the respondent Nos. 1 to

6 herein (IA No.2 of 2014 in Revision CRPMP No. 6377 of 2014 moved in and Civil Revision Petition No.2786 of 2013 and IA No.1 of 2014 in Revision CRMP No.4997 / 2014 moved in and Civil Revision Petition No.2787 /2013). As a result of allowing the review petitions, the common judgment and order dated 09th July, 2013 passed by the predecessor Bench upholding the common order dated 23rd March, 2013 in Cases No. F1/3/2005 and F1/4/2005 passed by the Joint Collector, Mahabubnagar, has been set aside and as a sequel thereto, the orders dated 31st March, 1967 passed by the Tahsildar, Shadnagar, accepting the surrender of protected tenancy rights by the ancestors of the appellant have been confirmed.

3. The appeals have a chequered history that dates back to the year 1967. The facts relevant for deciding the present appeals are as follows:-

3.1 Late Shri Chandra Reddy and late Shri Chenna Reddy, both sons of Buchi Reddy, were protected tenants in respect of separate parcels of land situated in different survey numbers of Kammadanam Village, Shadnagar Mandal, Mahabubnagar District¹. The recorded landlord of the protected tenants was late Venkat Anantha Reddy, who was the Karta of a joint family comprising of himself and his brother, late Laxma Reddy. On the basis of an oral partition of the land that took place between the two brothers, the subject land fell to the share of late L. Harshavardhan Reddy (respondent No.6), son of late Laxma Reddy. Pertinently, L. Harshavardhan Reddy expired during the pendency of the review petitions and L. Sameera Reddy was brought on record as his legal heir. As

¹ Hereinafter referred to as 'subject land'

per the respondents, late Shri Chandra Reddy, who was a protected tenant in respect of the subject land measuring 57 acres and 16 guntas, had surrendered his protected tenancy rights on submitting a written application dated 6th August, 1966 to the Tehsildar. A similar application was submitted by the three legal heirs of Late Chenna Reddy (Ram Reddy, Chandra Reddy and Laxma Reddy) in respect of land measuring 98 acres 18 guntas. The respondents claim that on receiving the said applications, the Tehsildar, Shadnagar, recorded the statements of the applicants and after confirming the identity of the parties, issued a public notice and thereafter, accepted the surrender on satisfying the requirements prescribed in the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950². After accepting the surrender applications, the names of the protected tenants were struck off from the final records of tenancy, *vide* order dated 31st March, 1967.

3.2 It is also the version of the respondents that the protected tenants had surrendered their tenancy rights in favour of late Venkat Anantha Reddy pursuant to an understanding that the latter would not oppose the 38-B Certificate issued by the Tenancy Tribunal in favour of Chandra Reddy and the sons of late Chenna Reddy in respect of the parcel of land measuring 85 acres 23 guntas situated in Kammadanam Village. In other words, there was a reciprocity between the protected tenants and the landlord based on which, the landlord relinquished his rights in respect of land

² For short 'Act'

measuring 85 acrs 23 guntas in exchange of the surrender of the subject land by Chandra Reddy and the legal heirs of late Chenna Reddy.

3.3 On the other hand, the appellant, who is the legal heir of the original tenants, claims that his ancestors were dispossessed from the subject land in the year 1975 when they were trying to obtain 38-E Certificate from the authorities. Only in the year 2001 when the legal heirs of the protected tenants had applied for the final record of tenancy, did they discover that the names of the protected tenants had been struck off on the basis of the purported surrender proceedings conducted by the Tehsildar in the year 1967. Challenging the said surrender proceedings, the predecessors-in-interest of the appellant being the protected tenants, preferred appeals before the Joint Collector in February, 2002 along with an application seeking condonation of delay. The said appeals were allowed by the Joint Collector, Mahabubnagar, being the Appellate Authority, vide order dated 2nd April, 2005. Aggrieved by the said order, the respondents approached the High Court of Andhra Pradesh³ raising a plea that it was an *ex-parte* order and filed two Civil Revision Petitions (CRP No. 4620/2005 and CRP No. 4988/2005), which were allowed, vide order dated 19th September, 2006 and the matters were remanded back for fresh disposal. On a re-hearing, the Appellate Authority passed an order on 23rd March, 2013 whereby, the order dated 31st March, 1967 passed by the Tehsildar, Shadnagar accepting the surrender of the protected tenancy rights by the

³ For short 'High Court'

ancestors of the appellant, was set aside and the original entries in respect of the land in the final record of tenancy as existing prior to 1967, were restored.

3.4 Dissatisfied by the order dated 23rd March, 2013, the respondents once again approached the High Court by filing two Civil Revision Petitions (CRP No.2786/2013 and CRP No.2787/2013), which came to be dismissed by a common judgment and order dated 09th July, 2013. The review petitions subsequently filed by the respondents for seeking review of the aforesaid judgment (Rev. CRMP No.5443/2013 in Civil Revision Petition No. 2786/2013 and Rev. CRMP No. 5432/2013 in Civil Revision Petition No. 2787/2013) were also dismissed, *vide* order dated 20th February, 2014. The common judgment and order dated 9th July, 2013 and the order dated 20th February, 2014 were assailed by the respondent Nos. 1 to 6 through Special Leave Petitions (C) CC No. 8209- 8210/ 2014 that were disposed of with the following order passed on 4th July, 2014:

“Delay condoned.

The learned counsel for the petitioners submits that he would be in a position to file genuine documents to show that there was surrender of tenancy. If he will be able to obtain such documents, it is open to him to file a review before the High Court. The special leave petitions are disposed of accordingly.”

3.5 Armed with the above order, the respondents No. 1 to 6 again approached the High Court and filed a second round of review applications seeking review of the common order and judgment dated 9th July, 2013 which have been allowed by the impugned order. The learned Single Judge has upheld the surrender order dated 31st

March, 1967 passed by the Tehsildar, Shadnagar whereby the names of the protected tenants (predecessors-in-interest of the appellants) were deleted from the final records of tenancy.

4. Arguing for the appellant, Dr. Abhishek Manu Singhvi, learned Senior Advocate has contended that the review petitions filed by the respondents No. 1 to 6 are not maintainable as they do not satisfy any of the conditions for review provided in Order XLVII Rule 1 of the Civil Procedure Code, 1908⁴. He submitted that the grounds taken in the second set of review petitions were akin to those taken in the first set of review petitions and once the first set of review petitions were dismissed by the High Court, *vide* order dated 20th February, 2014 and no new grounds were taken by the respondents No.1 to 6 subsequently, there was no occasion to allow the second set of review petitions; that the respondents No. 1 to 6 did not take a plea that the documents subsequently filed by them, were not in their knowledge when they had filed the civil revision petitions and the first set of review petitions before the High Court for attracting the provisions of Order XLVII Rule 1 CPC. Stating that the scope of review is very limited and a review application can only be entertained if there is any error apparent on the face of the record, which the respondents No. 1 to 6 have failed to point out in the instant case, learned Senior Counsel submitted that the High Court ought to have dismissed the same outright. It was argued that by virtue of the impugned order, the High Court has virtually treated the review petitions filed by the respondents No. 1 to 6 as independent appeals, which is

4 For short 'CPC'

impermissible. To buttress the aforesaid submissions made on the limited ambit and scope of a review petition and the bar on filing successive review petitions, the decisions of this Court in **Babboo Alias Kalyandas and Others v. State of Madhya Pradesh**⁵ and **Lilly Thomas and Others v. Union of India and Others**⁶ have been cited.

5. Another plea sought to be taken on behalf of the appellant is that the name of the father of the protected tenants, Chandra Reddy and Chenna Reddy has been stated to be Papi Reddy in the surrender proceedings whereas, his correct name is Buchi Reddy which goes to show that the surrender proceedings conducted by the Tehsildar were fabricated and the fact of the matter is that neither the appellant, nor his ancestors had ever surrendered the tenancy rights in favour of the respondents/their ancestors/ predecessors- in-interest. It was contended that this fact is borne out from the declaration made by the landlord in the ceiling proceedings where he had admitted that 38-E Certificate was granted in respect of the subject land and the tenants were in possession thereof. It was canvassed that the High Court has failed to appreciate that had surrender of lands by the protected tenants in favour of the landlord actually taken place in the year 1967, as alleged, there was no occasion for the landlord to have later on claimed exemption of these lands for being computed as part of his holdings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973⁷.

5 (1979) 4 SCC 74

6 (2000) 6 SCC 224

7 For short 'the Land Ceiling Act'

6. The aforesaid submissions made on behalf of the appellant have been vehemently contested by Mr. Mukul Rohatgi, learned Senior Advocate appearing for the respondents. It was submitted that the surrender proceedings had attained finality in the year 1967 and after maintaining silence for almost 35 years, the legal heirs of the protected tenants, had filed a misconceived appeal under Section 90(1) of the Land Ceiling Act. Pertinently, the respondents being the purchasers of the subject land, were not made parties in the said proceedings and the Appellate Authority had proceeded to pass an order dated 2nd April, 2005 allowing the said appeals behind their back. Aggrieved by the said *ex parte* order, when the respondents approached the High Court, the matters were remanded back to the Appellate Authority for fresh adjudication. The Appellate Authority allowed the appeals, once again compelling the respondents to approach the High Court by filing fresh appeals which were knocked off *vide* order dated 09th July, 2013 and their review petitions were also dismissed on 20th February, 2014. Against the said dismissal orders, the respondents had to approach this Court. The petitions for special leave to appeal preferred by them were disposed of *vide* order dated 4th July, 2014 that has been extracted in para 5 hereinabove.

7. Learned Senior Advocate submitted that in the light of the permission granted by this Court, the respondents had filed review petitions in the Civil Revision Petitions before the High Court after obtaining certified copies of the relevant documents forming a part of the revenue records. Only after considering the said documents did the learned Single Judge allow the review petitions for cogent and valid reasons that do not deserve

any interference. It has been canvassed on behalf of the respondents that the legal heirs of the protected tenant had knowledge about the surrender of the subject land right from the year 1967 to 2001 and they were also aware of the fact that the names of their ancestors were not reflected in the protected tenants register. The real position is that the ancestors of the appellant were never in possession of the subject land after 1967. Despite that, they had approached the Appellate Authority challenging the surrender proceedings after a passage of 35 years. Contending that said appeals were highly belated and deserved to be thrown out on the ground of limitation alone without going into the merits, the decisions in **Sakuru v. Tanaji**⁸ and **Dharappa v. Bijapur Coop. Milk Products Societies Union Limited**⁹ have been cited. It has been urged that the appeals preferred by the ancestors of the appellant were not maintainable, being patently barred by limitation which aspect has been gone into by the High Court while passing the impugned judgment allowing the review petitions filed by the respondents.

8. As for the mis-description of the predecessor-in-interest of the appellant, it was submitted that Buchi Reddy was also known Papi Reddy in the village which fact is reflected from the revenue records, namely, *Faisal Patti* record of the village, as recorded by the Patwari. Counsel for the respondents also sought to negate the ground taken by the other side with reference to the landlord claiming exemption under the land ceiling proceedings on the ground that Land Reforms Tribunal did not accept such a plea of exemption. It was

⁸ (1985) 3 SCC 590

⁹ (2007) 9 SCC 109

thus submitted that surrender of the tenancy rights had attained finality in the year 1967 itself and the appellant and his ancestors have reopened settled issues after passage of 35 years reckoned from the date of surrender only for the reason that the price of the subject land, which is situated close to the International Airport at Shamshabad, have escalated and he wants to encash the same.

9. This Court has carefully perused the impugned judgment and the orders preceding the impugned judgment, gone through the records and given its thoughtful consideration to the arguments advanced by learned counsel for the parties. The only point that arises for consideration in these appeals is whether the respondents/review petitioners had made out a case for reviewing the judgment and order dated 23rd March, 2013 by satisfying the criteria for entertaining a second set of review petitions, having failed to succeed in the first set of review petitions.

10. The core argument advanced on behalf of the appellant that the High Court ought not to have entertained successive review petitions filed by the respondents when they could not demonstrate emergence of any new facts or point out any error apparent on the face of the record, for allowing the review applications, must be put to test by examining the relevant provisions of law that governs review jurisdiction.

11. Section 114 of the CPC which is the substantive provision, deals with the scope of review and states as follows:

“Review:- Subject as aforesaid, any person considering himself aggrieved:-
 (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;
 (b) by a decree or order from which no appeal is allowed by this Code; or
 (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

12. The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:

“1. Application for review of judgment - (1) Any person considering himself aggrieved -

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

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

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

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

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

¹[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.] “

13. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within

the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

14. In ***Col. Avatar Singh Sekhon v. Union of India and Others***¹⁰, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness.

The observations made are as under:

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante and Another v. Sheikh Habib*¹¹ this Court observed :

‘A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’”

(emphasis added)

15. In ***Parsion Devi and Others v. Sumitri Devi and Others***¹², stating that an error that is not self- evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face

¹⁰ 1980 Supp SCC 562

¹¹ (1975) 1 SCC 674

¹² (1997) 8 SCC 715

of the record for the Court to exercise the powers of review, this Court held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*¹³ this Court opined:

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.*'

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury*¹⁴ while quoting with approval a passage from *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*¹⁵ this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. **Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of this jurisdiction under Order 47 rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'".**

[emphasis added]

16. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order XLVII Rule 1 of the CPC in *Lily Thomas(supra)*, this Court held as under :

¹³ 1964 SCR (5) 174

¹⁴ (1995) 1 SCC 170

¹⁵ (1979) 4 SCC 389

“54. Article 137 empowers this court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 rule 1 of the Code of Civil Procedure which provides:

“1. Application for review of judgment - (1) Any person considering himself aggrieved -

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

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

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

Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under [Article 136](#) or [Article 32](#) of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

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58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in *Sarla Mudgal case*¹⁶. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact

¹⁶ (1995) 3 SCC 635, *Sarla Mudgal, President, Kalyani and Others v. Union of India and Others*

addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal*¹⁶ case. We have also not found any mistake or error apparent on the face of the record requiring a review. **Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence.** No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting [Section 494](#) amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. **The words "any-other sufficient reason appearing in Order 47 Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chajju Ram v. Neki Ram*¹⁷ and approved by this Court in *Moran Mar Basselios Catholicos. v. Most Rev. Mar Poulouse Athanasius*¹⁸. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. in *T.C. Basappa v. T. Nagappa*¹⁹ this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad*²⁰, it was held:**

"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error, cease to be mere error and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, CJ in – '*Batuk K Vyas v. Surat Borough Municipality*²¹, that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. **The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.**

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of [Article 137](#) read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the

17 AIR 1922 PC 112

18 1955 SCR 520

19 1955 SCR 250

20 AIR 1955 SC 233

21 ILR 1953 Bom 191

judgment in *Sarla Mudgal case*¹⁶. The petition is misconceived and bereft of any substance." (*emphasis added*)

17. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In *Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and Others*²², this Court observed as follows:

"10.In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. **The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.** It has not been contended before us that there is any error apparent on the face of the record. **To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."**

(*emphasis added*)

18. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been

22 (2005) 6 SCC 651

elucidated in ***Jain Studios Ltd. V. Shin Satellite Public Co. Ltd.***²³ where it was held thus:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. **It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.**

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. **Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.**
(*emphasis added*)

19. After discussing a series of decisions on review jurisdiction in ***Kamlesh Verma v. Mayawati and Others***²⁴, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

23 (2006) 5 SCC 501

24 (2013) 8 SCC 320

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chajju Ram vs. Neki*¹⁷, and approved by this Court in *Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors.*¹⁸ to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*²⁵,

20.2. When the review will not be maintainable: -

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review. (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

20. In ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma***¹⁵, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-

25 (2013) 8 SCC 337

stead. The said appeal was allowed by this Court with the following observations:

“3 ...It is true as observed by this Court in *Shivdeo Singh and Others v. State of Punjab*²⁶ there is nothing in [Article 226](#) of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. **The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.**”

(emphasis added)

21. In *State of West Bengal and Others v. Kamal Sengupta and Another*²⁷, this Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. **In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.**”

(emphasis added)

²⁶ (1979) 4 SCC 389

²⁷ (2008) 8 SCC 612

22. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:

"22. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision".

(emphasis added)

23. In *S. Nagaraj and Others v. State of Karnataka and Another*²⁸, this Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus :

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court".

(emphasis added)

24. In *Patel Narshi Thakershi and Others v. Shri Pradyuman Singhji Arjunsinghji*²⁹, this Court held as follows:

²⁸ 1993 Supp (4) SCC 595

²⁹ (1971) 3 SCC 844

“4..... It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.....”

(emphasis added)

25. In *Ram Sahu (Dead) Through LRs and Others v. Vinod Kumar Rawat and Others*³⁰, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule

30 (2020) SCC Online SC 896

1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule” (Refer: **Chajju Ram v. Neki Ram**¹⁷ and **Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse Athanasius and Others**¹⁸).

27. In the light of the legal position crystalized above, let us now examine the grievance raised by the appellant. The learned Single Judge of the High Court has taken great pains to discuss the three circumstances available under Order XLVII CPC for maintaining a review application and

observed that in the instant case, the respondents had stated before this Court that they had in their possession, genuine documents relating to surrender of the protected tenancy rights in respect of the subject land and in view of the said submission, the petitions for Special Leave to Appeal were disposed of with an observation that if the respondents were able to obtain such documents, it would be open to them to file a review petition before the High Court. What is relevant is that this Court had even then declined to interfere with the findings on merits returned by the High Court vide Judgment dated 09th July, 2013; nor was the review order dated 20th February, 2014, interfered with. Under the garb of the liberty granted to them to approach the High Court again, all that the respondents have done is to obtain certified copies of the revenue records in respect of the subject land and enclosed them with the second set of review petitions. This is so when photocopies of the said documents had been filed by them earlier.

28. Nothing prevented the respondents from filing the certified copies of the revenue records even earlier, but they elected to file only photocopies of the very same surrender proceedings along with the revision petitions that were ultimately dismissed by the High Court vide common judgment dated 9th July, 2013. The High Court refused to accept the version of the respondents that the protected tenants had surrendered the subject lands in favour of the landlord. The discussion in the judgment regarding the purported surrender

proceedings of protected rights by the tenants before the Tehsildar in the year 1967 is revealing and extracted hereinbelow for ready reference :-

“2.The legal representatives of the protected tenants were not parties to the alleged surrender proceedings before the then Tahsildar in the year 1967. There is nothing on record to show that they were ever dispossessed from the lands, so that they can take necessary steps under relevant provisions of the Act before the authorities concerned. After coming to know about earlier proceedings which are stated to be in the year 1967, they rushed to the Joint Collector with the present appeals. There is nothing on record to impute knowledge of the proceedings of the year 1967 to them at any time prior to filing of the appeals before the Joint Collector.

3. Though the alleged surrender of protected tenancy rights by one protected tenant and three legal representatives of the other protected tenant was stated to be in the year 1967, it is pointed out by the Joint Collector in the impugned order that the original land holder/landlord sought for exemption from computing these lands in his holding under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. If really the alleged surrender of lands by the protected tenants in favour of the landlord was in the year 1967, the landlord would not have claimed exemption for these lands from being computed in his holding under the Ceiling Act. No doubt, the Land Reforms Tribunal rejected the plea of exemption put forward by the landlord on the ground that he did not produce proper evidence of granting certificates under Section 38-E of the Act in favour of the protected tenants for these lands. Therefore, these lands were computed in the holding of the landlord not on the ground of the protected tenants surrendering their protected tenancy rights, but on the ground that the landholder could not produce relevant documents for exemption. Therefore, the Joint Collector rightly came to the conclusion that file relating to surrender of lands by the protected tenants in the year 1967 was manipulated by ante dating the same after the land ceiling case was finalized by the Land Ceiling Tribunal.

4. Further, the Joint Collector rightly disbelieved the alleged surrender of protected tenancy rights in the year 1967 on the ground that if the surrender in the year 1967 was correct, the question of again terminating protected tenancy rights for Ac.36.34 guntas by order dated 16.06.2008 does not arise.

5. Record of the then Tahsildar in the year 1967 discloses that one protected tenant and legal heirs of other protected tenant intended to surrender protected tenancy rights in favour of the landlord as the landlord intended to cultivate these lands personally. Further, the Joint Collector came to the conclusion that the alleged surrender in the year 1967 was without knowledge of the protected tenant and legal heirs of another protested tenant inasmuch as the landholder pleaded before the Land Ceilings Tribunal in his land ceiling declaration that these lands are in possession of the protected tenants. From the above circumstances, it can be safely concluded that record of the then Tahsildar, Shamshadnagar by way of surrender of protected tenancy rights under Section 19 of the Act was not only ante dated but also cooked up. Hence, find no reason to come to a different

conclusion
from that of the Joint Collector in this revision petition. The common
order passed by the Joint Collector is proper, legal and regular.”

29. In the first round of the review proceedings filed by the respondents for seeking review of the order and judgment dated 9th July, 2013, they had sought to raise, amongst others, the plea of limitation, the purported error on the part of the Appellate Authority in calling for the records from the office of the Revenue Divisional Officer for deciding the case and the alleged misconstruction of the ceiling proceedings conducted by the Land Reforms Tribunal, all of which were earlier argued and did not find favour with the High Court. But, at no stage was a plea taken by the respondents with regard to the discovery of new documents which could not have been produced by them after undertaking due diligence before the order dated 9th July, 2013 came to be passed. When the first set of review petitions were dismissed by the learned Single Judge by a detailed order dated 20th February, 2014, it was specifically observed in para 2 that the respondents did not plead that any new facts had come to light for the consideration of the Court. In fact, a perusal of the said order shows that the respondents only sought to reargue the points that had already been taken by them and were rejected outrightly, vide judgment dated 9th July, 2013.

30. The sequence of events narrated in the order dated 20th February, 2014, passed by the High Court while dismissing the first set of review

applications brings to the fore the fact that the respondents had approached the High Court twice by filing Civil Revision Petitions. In the first round, two Revision Petitions [CRPs No. 4620 and 4988 of 2005] filed by the respondents against the order dated 2nd April, 2005, passed by the Appellate Authority, were allowed by the High Court vide order dated 19th September, 2006 on the ground that the proceedings initiated by the legal heirs of the protected tenants went uncontested before the Appellate Authority. Accordingly, the appeals were remitted back to the Appellate Authority for fresh consideration. On remand, the said appeals were disposed of by the Appellate Authority on merits vide order dated 23rd March, 2013. The second set of Revision Petitions filed by the respondents questioning the said decision, were turned down on merits by the common order dated 9th July, 2013, review whereof was also dismissed vide order dated 20th February, 2014.

31. The above chronology of events gains significance as it goes to amply demonstrate that several opportunities were available to the respondents if they really wished to file authenticated copies of the revenue records relating to the purported surrender proceedings before the Tehsildar which they did not avail of, for reasons best known to them. The first opportunity arose when the respondents challenged the *ex parte* order dated 2nd April, 2005 passed by the Appellate Authority when they filed two Civil

Revision Petitions which were allowed and the matter was remanded back to the Appellate Authority for fresh consideration; the second opportunity arose when the Appellate Authority re-considered the appeals remitted by the High Court and passed an order dated 23rd March, 2013, in favour of the predecessors-in-interest of the appellant; the third opportunity arose when the respondents preferred a second set of Civil Revision Petitions assailing the order dated 23rd March, 2013 that culminated in the common judgment and order dated 9th July, 2013 passed by the High Court; the fourth opportunity arose when the respondents filed two review applications for seeking review of the common judgment and order dated 9th July, 2013, that came to be dismissed vide order dated 20th February, 2014; and the fifth opportunity arose when the respondents preferred petitions for special leave to appeal before this Court being aggrieved by the common judgment and orders dated 9th July, 2013 and the review order dated 20th February, 2014 passed by the High Court.

32. Pertinently, this Court had declined to entertain the said petitions preferred by the respondents but having regard to the submission made on their behalf that they would be in a position to file documents to show that there was surrender of tenancy on the part of the protected tenants and their legal heirs, it was left open to the respondents to file a review petition before the High Court. It was only thereafter that the respondents woke up to filing

certified copies of those documents, xerox copies whereof had already been filed by them in the second round of revision petitions preferred before the High Court. That being the position, the respondents cannot be heard to state that the documents in question were not to their knowledge or that the certified copies of the revenue record could not be produced by them before the High Court passed the common judgment and order dated 09th July, 2013. At the time of filing the second set of review petitions, the respondents raised a plea that the learned Single Judge did not consider the relevant record produced by them regarding the surrender proceedings and had erroneously returned a finding that the file relating to surrender of the land by the protected tenants in the year 1967, was manipulated by ante-dating the same after the land ceiling was finalized by the Land Ceiling Tribunal. However, apart from the bald averment by the respondents that the documents were not considered, which averment has been replicated in the impugned order, a perusal of the earlier judgment of the High Court does not suggest any such non-consideration. Rather, it appears that the High Court considered the records available before it, which included the copies of the revenue records as admitted by the parties and passed certain observations.”

33. A perusal of the averments made in the second set of review petitions shows that there is no explanation offered regarding discovery of new material in the form of the documents sought to be filed. When it is the

case of the respondents themselves that the relevant documents were all along available in the revenue records and they had already filed xerox copies thereof during the second revision proceedings, they can hardly be heard to state that the said documents were unknown to them and were unavailable for being produced before the learned Single Judge prior to passing of the common judgment and order dated 9th July, 2013. It is evident from the above that the respondents had not discovered any new material for them to have moved a second set of review petitions. In order to satisfy the requirements prescribed in Order XLVII Rule 1 CPC, it is imperative for a party to establish that discovery of the new material or evidence was neither within its knowledge when the decree was passed, nor could the party have laid its hands on such documents/evidence after having exercised due diligence, prior to passing of the order. What to speak of conclusive proof of having undertaken an exercise of due diligence for accessing the relevant documents, there is not an averment made by the respondents in the second set of review petitions to the effect that they could not trace the documents in question earlier or that they had made sincere efforts to obtain certified copies thereof before the common order dated 9th July, 2013 was passed, but could not do so for some cogent and valid reasons.

34. In other words, nothing has been stated on affidavit to substantiate the plea taken by the respondents at such a belated stage that the documents

sought to be filed by them with the second set of review petitions had come to light after passing of the judgment and order dated 9th July, 2013. Under the garb of the liberty granted to them, the respondents have tried to fill in the glaring loopholes and introduce evidence in the review proceedings that was all along in their power and possession and ought to have seen the light of the day much earlier. In fact, it appears that the Civil Revision Petitions were originally argued to the hilt on several other grounds, not limited just to the revenue record, which were all considered and turned down as meritless. Therefore, we have no hesitation in holding that non-production of the relevant documents on the part of the respondents at the appropriate stage cannot be a ground for seeking review of the judgment and order dated 9th July, 2013 particularly, when five opportunities enumerated in para 31 above, were available to them for production of the said documents, which were all frittered away, one by one.

35. In our opinion, even otherwise, recourse to successive review petitions against the same order is impermissible more so, when the respondents have miserably failed to draw the attention of this Court to any circumstances that would entitle them to invoke review jurisdiction within the ambit of the Rules. Under the rules, the respondents were not required to produce “genuine” documents but new documents/evidence that was not within their knowledge and could not have been so even after exercise of due

diligence, which could have turned the tables in their favour. Nor has any error apparent on the face of the record been brought out by them.

36. Given the above facts and circumstances, we are of the firm view that the second set of review petitions were nothing short of an abuse of the process of the court and ought to have been rejected by the High Court as not maintainable, without having gone into the merits of the matter. In the result, the present appeals are allowed. The impugned judgment dated 29th April, 2022, is set aside and the common judgment and order dated 9th July, 2013 passed in CRP No.2786/2013 and CRP No. 2787 of 2013, is restored.

37. Parties are left to bear their own expenses.

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

.....J.
[KRISHNA MURARI]

.....J.
[HIMA KOHLI]

NEW DELHI,
AUGUST 18, 2022



REPORTABLE

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
REVIEW PETITION (CIVIL) NO.526 OF 2023
IN
CIVIL APPEAL NO.6990 OF 2014**

KARNAIL SINGH

...PETITIONER (S)

VERSUS

STATE OF HARYANA & ORS.

...RESPONDENT (S)

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J U D G M E N T

B.R. GAVAI, J.

I. FACTUAL BACKGROUND

1. The present review petition has been filed by the original respondent No.28 in the Appeal, seeking review of the judgment of this Court passed on 7th April 2022, thereby allowing the Civil Appeal No. 6990 of 2014 filed by the State of Haryana against the judgement and order passed by the Full Bench of the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as “Full Bench of the High Court”) in Civil Writ Petition No. 5877 of 1992 dated 13th March 2003

2. The bare necessary facts giving rise to the present review petition are thus:

2.1 The State of Haryana, by way of Government Gazette Notification dated 11th February 1992 (hereinafter referred to as “Haryana Act No. 9 of 1992”) inserted sub-clause (6) to Section

2(g) of the Haryana¹ Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”) along with an explanation to the said sub-clause which received the assent of the President on 14th January 1992. The sub-clause (6) to Section 2(g) of the 1961 Act reads thus:

“2. In this Act, unless the context otherwise requires –

xxx xxx xxx

(g) “shamilat deh” includes-

xxx xxx xxx

(6) lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.

Explanation – Lands entered in the column of ownership of record of rights as “Jumla Malkan Wa Digar Haqdarar Arazi Hassab Rasad”, “Jumla Malkan” or

¹ For the word “Punjab” deemed to have been substituted w.e.f. 01.11.1966 vide Haryana Act No.15 of 2021, the Haryana Short Titles Amendment Act 2021 dated 05.04.2021.

“Mushtarka Malkan” shall be shamilat deh within the meaning of this section.”

2.2 Being aggrieved by the said amendment, the present review petitioner along with similarly situated landowners, holding land in villages, who contribute a share of their holdings to form a common pool of land called ‘shamilat deh’, meant exclusively for the common purposes of the village inhabitants filed a batch of Writ Petitions before the High Court. Considering the matter to be involving important questions of law, likely to arise in a large number of cases and involving a large chunk of land; the Hon’ble Division Bench, then seized of the matter vide Orders dated 01st June, 1993 directed the papers of the case to be placed before the Hon’ble Chief Justice for constituting a Full Bench of the High Court for determination of the vires of the Haryana Act No. 9 of 1992 and the explanation thereof. The Full Bench of the High Court vide judgement dated 18th January 1995 allowed the batch

of Writ Petitions, wherein the judgement came to be recorded in CWP No. 5877 of 1992.

2.3 The State of Haryana challenged the decision of the Full Bench of the High Court before this Court vide Civil Appeal No. 5480 of 1995; wherein this Court held that certain essentials of Article 31-A of the Constitution of India were overlooked and remanded the matter back to the High Court for re-consideration of the issues in light of Article 31A of the Constitution of India.

2.4 Accordingly, the Full Bench of the High Court vide judgement and order dated 13th March 2003, partly allowed the petition in terms of the following:

“In view of the discussion made above, we hold that:

- (i) The sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948.

- (ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;
- (iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the Gram Panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g) and the explanation appended

thereto or any other provisions of the Act of 1961 or the Act of 1948;

- (iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.”

2.5 The Full Bench of the High Court also issued certain consequential directions with regard to certain mutation entries made by the Revenue Authorities.

2.6 Being aggrieved thus, the State of Haryana filed a Civil Appeal No. 6990 before this Court, which came to be allowed by judgement and order under review dated 07th April 2022 (hereinafter referred to as “**JUR**”); and the Writ Petition of the Original Writ Petitioners was consequently dismissed.

2.7 Seeking review, the present Review Petition has been filed by the review petitioner. This Court on 31st January, 2023 passed the following order in the present Review Petitions:

“List this review petition for hearing in open Court.”

2.8 Subsequently, this Court on 10th April, 2023 passed the following order:

“1. Permission to file review petition(s) is granted.

2. Delay Condoned.

3. Issue Notice on the I.A. (Diary) Nos. 69003 and 69005 of 2023 in Diary No. 14941 of 2022, M.A. (Diary) No. 13972 of 2023 and on the review petition(s), returnable on 24.04.2023.

4. In addition to normal mode of service, liberty is granted to serve the Standing Counsel for the State.”

3. Accordingly, we have heard Shri Narender Hooda, learned Senior Counsel and Shri Pradeep Gupta, learned counsel appearing on behalf of the review petitioner, Shri Pradeep Kant,

learned Senior Counsel and Shri B.K. Satija, learned Additional Advocate General appearing for the respondent-State of Haryana.

II. SUBMISSIONS OF THE PARTIES

4. Shri Narender Hooda submits that the **JUR** is totally contrary to the law laid down by the Constitution Bench of this Court in the case of ***Bhagat Ram & others vs. State of Punjab & others***² (hereinafter referred to as “***Bhagat Ram***”). It is submitted that the **JUR** also does not correctly consider the law laid down by the Constitution Bench of this Court in the case of ***Ranjit Singh and others vs. State of Punjab and others***³ (hereinafter referred to as “***Ranjit Singh***”) so also another Constitution Bench judgment of this Court in the case of ***Ajit Singh vs. State of Punjab & another***⁴ (hereinafter referred to as “***Ajit Singh***”).

² (1967) 2 SCR 165 : AIR 1967 SC 927

³ (1965) 1 SCR 82 : AIR 1965 SC 632

⁴ (1967) 2 SCR 143: AIR 1967 SC 856

5. Shri Hooda submits that after considering the provisions of Section 23-A and Section 24 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Consolidation Act”), this Court in **Bhagat Ram** has clearly held that, till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. It has also been held that the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. He therefore submits that the Full Bench of the High Court in the case of **Jai Singh & others vs. State of Haryana**⁵ (hereinafter referred to as “**Jai Singh II**”) has correctly relying on **Bhagat Ram** held that the land which is reserved, but not earmarked for any common purpose, would not come under the purview of Section 2(g)(6) of the 1961 Act, as inserted by Haryana Act No.9 of 1992.

⁵ 2003 SCC OnLine P&H 409

6. Shri Hooda submits that the Constitution Bench of this Court in **Ajit Singh** was dealing with the lands which were reserved for common purposes such as khals, paths, khurrahs, panchayat ghars and schools etc. It was held that in view of Rule 16(ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as “the Consolidation Rules”), the title still vests in the proprietary body, and the management of the said lands is done on behalf of the proprietary body. It was further held that the land was used for the common needs and benefits of the estate or estates concerned. This Court held that a fraction of each proprietor’s land was taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate as mentioned above. It has been held that the proprietors naturally would also be entitled to a share in the benefits along with others. In the facts of the said case, this Court held that all such lands, which had been specifically earmarked in the Consolidation

Scheme for the purposes mentioned therein and were used for the purposes therein for the benefit of the proprietors among others, would not amount to acquisition, but a 'modification' of the rights. It was held that, by such 'modification', the beneficiary was not the State and as such, would not be hit by the second proviso to Article 31-A of the Constitution of India.

7. Shri Hooda further submits that even in ***Ranjit Singh***, the Consolidation Scheme earmarked lands reserved under Section 18(c) of the Consolidation Act for various common purposes. The Constitution Bench of this Court held that the provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enures for the benefit of rural population and it must be considered to be an essential part of the redistribution of holdings and open lands.

8. Shri Hooda further submitted that in a catena of judgments, this Court has held that the lands, though reserved but not

earmarked and put for any common purpose under the Consolidation Scheme prepared under Section 14 of the Consolidation Act read with Rules 5 and 7 of the Consolidation Rules and entered in the column of ownership as 'Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat' and in the column of possession with the proprietors, also known as Bachat lands, would not vest in the Gram Panchayat or the State Government. Shri Hooda submits that based on such judgments, thousands of transactions have been entered into between the parties. It is submitted that, though invoking the doctrine of *stare decisis* was not necessary, this Court in the **JUR** has not even touched that aspect of the matter. All the judgments which have been holding the field for decades and thousands of transactions which have been entered into between the parties, have been set at naught at the stroke of a pen by the **JUR**.

9. Shri Hooda further submits that in view of the **JUR**, the rights of the parties which were crystalized by the judgments of the High Court and which was affirmed by this Court by judgment dated 27th August, 2001⁶ have also been adversely affected without such parties having been heard. He therefore submits that the **JUR** needs to be recalled and the appeals filed by the State deserve to be dismissed.

10. Per contra, Shri Pradeep Kant, learned Senior Counsel appearing on behalf of the respondent-State of Haryana submits that the present review petition itself is not maintainable. It is submitted that the review applicant was a party respondent to the appeal and the **JUR** has been delivered after hearing the learned counsel for the parties. It is submitted that the scope of review is very limited. It is also submitted that under the guise of a review, a party cannot be permitted to reagitate and reargue

⁶ 2001 SCC OnLine SC 1488 [State of Punjab vs. Gurjant Singh and others (CA Nos.5709-5714 of 2001 @ SLP(C) Nos.16173-16178 of 2000)]

the questions which have already been addressed and decided. He placed reliance on the following judgments of this Court in support of his submissions:

- (i) ***Sow Chandra Kante and another vs. Sheikh Habib***⁷
- (ii) ***Parsion Devi and others vs. Sumitri Devi and others***⁸
- (iii) ***Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. and others***⁹
- (iv) ***Kamlesh Verma vs. Mayawati and others***¹⁰
- (v) ***Union of India vs. Sandur Manganese and Iron Ores Limited and others***¹¹
- (vi) ***Shanti Conductors Private Limited vs. Assam State Electricity Board and others***¹²

⁷ (1975) 1 SCC 674

⁸ (1997) 8 SCC 715

⁹ (2005) 6 SCC 651

¹⁰ (2013) 8 SCC 320

¹¹ (2013) 8 SCC 337

¹² (2020) 2 SCC 677

(vii) ***Shri Ram Sahu (Dead) through legal representatives and others vs. Vinod Kumar Rawat and others***¹³

11. With the assistance of the learned counsel for the parties, we have scrutinized the material on record.

III. CONSIDERATION ON THE SCOPE OF REVIEW JURISDICTION

12. At the outset, we must reiterate that the scope of review by this Court is very limited. The scope of review jurisdiction has been delineated by this Court in a catena of judgments. We would not like to burden the present judgment by reproducing all those judgments. This Court in the case of ***Kamlesh Verma vs. Mayawati and others (supra)***, after surveying the earlier law laid down by this Court has summarized the principles thus:

“Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

¹³ (2021) 13 SCC 1

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

13. It is thus settled that the review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out. We are also equally aware of the fact that the review proceedings cannot be equated with the original hearing of the case. The review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. We are also aware that such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched.

14. In the light of the aforesaid principles, we will have to examine the present case.

IV. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II

15. The background in which *Jai Singh II* has been decided has already been stated by us in the beginning. In the first round of litigation, the High Court had held the provisions of Section

2(g)(6) of the 1961 Act to be unconstitutional being violative of second proviso to Article 31-A of the Constitution of India. This Court in the first round has set aside the judgment of the Full Bench of the High Court and remanded the matter for deciding the factual aspect as to whether the lands in question were within the ceiling limit or not.

16. As such, the scope of the dispute in the second round was very limited. The Full Bench of the High Court, after coming to a finding of fact that the lands in question were within the ceiling limit, partly allowed the petition. The operative part of the judgment of the Full Bench of the High Court has already been reproduced by us hereinabove in paragraph 2.4.

17. The State was not aggrieved with the findings on issue nos. (i), (ii) and (iv).

By clause (i), the Full Bench of the High Court held that sub-section (6) of Section 2(g) of the 1961 Act and the explanation appended thereto is only an elucidation of the existing provisions

of the said Act read with the provisions contained in the Consolidation Act.

By clause (ii), it held that the unamended provisions of the 1961 Act and, in particular, Section 2(g)(1) read with Sections 17 and 23-A of the Consolidation Act and Rule 16(ii) of the Consolidation Rules cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands.

By clause (iv), the Full Bench of the High Court held that, all such lands in the consolidation scheme which were reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be; even though in the column of ownership the entries may be 'Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat' etc.

18. The grievance of the State was only with regard to clause (iii), wherein it has been held that the lands which had been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and have been entered in the column of ownership as 'Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat', and in the column of possession with the Gram Panchayat or the State Government, would not vest in the Gram Panchayat or the State Government but continue to vest with the proprietors.

19. This Court in the **JUR** has held that conclusion no.(iii) arrived at by the High Court was erroneous and not sustainable and accordingly set it aside. It has been held that the unutilized land was not available for redistribution amongst the proprietors. This Court further held that the findings recorded by the different benches of the High Court were clearly erroneous and not

sustainable. This Court held that the land reserved for common purposes cannot be re-partitioned amongst the proprietors only because at a particular given time, the land so reserved has not been put to common use. This Court held that the 'common purpose' is a dynamic expression as it keeps changing due to the change in requirement of the society and the passing times and therefore, once the land has been reserved for common purposes, it cannot be reverted to the proprietors for redistribution.

20. The limited enquiry that would be permissible for us in these proceedings is as to whether the said finding is a material error, manifest on the face of the order, undermines its soundness or results in the miscarriage of justice or not.

21. At the cost of repetition, we reiterate that it will not be permissible for us to hear the matter as if it was an appeal arising from the **JUR.**

V. CONSIDERATION OF THE CONSTITUTION BENCH JUDGMENTS OF THIS COURT IN RANJIT SINGH, AJIT SINGH AND BHAGAT RAM

22. For considering the controversy, a reference to three Constitution Bench Judgments of this Court would be necessary.

23. The first one is in the case of *Ranjit Singh*. In the said case, the Constitution Bench of this Court was concerned with the consolidation proceedings in which portions of land from those commonly owned by the appellants therein as proprietors, had been reserved for the village Panchayat and handed over to it for diverse purposes; whereas, other portions had been reserved either for non-proprietors or for the common purposes of the villages. In the said case, in the village Virk Kalan, 270 kanals and 13 marlas had been given to the village Panchayat for management and realization of income, even though the ownership was still shown in village papers as Shamilat Deh in the names of the proprietors; 10 kanals and 3 marlas had been reserved for abadi to be distributed among persons entitled

thereto, and 3 kanals and 7 marlas had been reserved for manure pits. Similarly, in village Sewana, certain lands were set apart for the village Panchayat for extension of the abadi and to enable grants of certain land to be made to each family of non-proprietors and certain lands had been reserved for a primary school and some more for a *phirni*. Similarly, in village Mehnd, land had been reserved for the village Panchayat, a school, tanning ground, hospital, cremation ground and for non-proprietors. The proprietors were not paid compensation for the lands and as such, taking away and allotment of the lands was the subject matter of challenge in those appeals in the said case.

24. The appeals before this Court were heard and closed for judgment on 27th April 1964. The judgment had to be postponed till after the vacation. However, before the Court could reassemble after the vacation on 20th July 1964, the Constitution (Seventeenth Amendment) Act, 1964 received the assent of the President i.e. on 20th June, 1964. Vide the said Amendment, a

new sub-clause (a) in clause (2) of Article 31-A was substituted retrospectively and added a proviso to clause (1). The appeals were set down to be mentioned on July 20/23, 1964, and counsel were asked if, in view of the amendment, they wished to say anything. However, neither of parties wished to argue. The appeals were thus decided on the old arguments, though it was clear to the Court that the amendment of Article 31-A, which had a far-reaching effect, must have affected one or other of the parties. The Constitution Bench upheld the judgment of the High Court which had held that the transfer of *shamilat deh* owned by the proprietors to the village Panchayat for the purposes of management and the conferral of proprietary rights on non-proprietors in respect of lands in *abadi deh* was not ultra vires Article 31 inasmuch as, no compensation was payable.

25. It must be noted that the judgment of the High Court was rendered by interpreting Article 31-A as it existed prior to the Constitution (Seventeenth Amendment) Act, 1964. This Court

though called upon the parties to address the Court on the effect of the Constitution (Seventeenth Amendment) Act, 1964, no arguments were advanced. As such, in **Ranjit Singh**, this Court did not have the occasion to consider the effect of the Constitution (Seventeenth Amendment) Act, 1964 by which the second proviso was added to Article 31-A of the Constitution of India. In that view of the matter, the judgment of the Constitution Bench of this Court in **Ranjit Singh** will not have a bearing on the present matter.

26. In the case of **Ajit Singh** (supra), again the challenge was to the scheme made under the provisions of the Consolidation Act. One of the grounds raised before the High Court as well as this Court was that the compensation must be paid to the appellant for the land reserved in the scheme for various purposes in accordance with the second proviso to Article 31-A(1) inserted by the Constitution (Seventeenth Amendment) Act, 1964.

27. It will be relevant to refer to the following paragraphs in **Ajit**

Singh:

“6. Coming now to the third point raised by Mr Iyenger, we may first mention that it was held by this Court in *Ranjit Singh v. State of Punjab* [(1965) 1 SCR 82] that the Act was protected from challenge by Article 31-A. It is necessary to set out the relevant constitutional provisions. The relevant portion of Article 31-A reads as under:

“31-A. (1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights.....

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

Provided that * * *

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised

therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2)(b) the expression ‘rights’ in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, *raiyyat*, *under-raiyyat* or other intermediary and any rights or privileges in respect of land revenue.”

Relevant portions of Articles 19 and 31 may also be set out because the learned counsel have laid stress on the language employed therein.

“19. (1) All citizens shall have the right—

(f) to acquire, hold and dispose of property.

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.”

7. It would be noticed that Article 31-A(1)(a) mentions four categories; first acquisition by the State of an estate; second, acquisition by the State of rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories are mentioned separately and are different. In the first two categories the State “acquires” either an estate or rights in an estate. In other words, there is a transference of an estate or the rights in an estate to the State. When there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. But if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression “acquisition by the State of an estate”. Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

8. It seems to us that there is this essential difference between “acquisition by the State” on the one hand and “modification or extinguishment of rights”

on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. For example, suppose the State is the landlord of an estate and there is a lease of that property, and a law provides for the extinguishment of leases held in an estate. In one sense it would be an extinguishment of the rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State.

9. Coming now to the second proviso to Article 31-A, it would be noticed that only one category is mentioned in the proviso, the category being “acquisition by the State of an estate”. It means that the law must make a provision for the acquisition by the State of an estate. But what is the true meaning of the expression “acquisition by the State of an estate”. In the context of Article 31-A, the expression “acquisition by the State of an estate” in the second proviso to Article 31-A(1) must have the same meaning as it has in clause (1)(a) to Article 31-A. It is urged on behalf of the respondents before us that the expression “acquisition by the State of any

estate” in Article 31-A(1)(a) has the same meaning as it has in Article 31(2-A). In other words, it is urged that the expression “acquisition by the State of any estate” means transfer of the ownership or right to possession of an estate to the State. Mr. Iyengar on the other hand urges that the expression “acquisition by the State” has a very wide meaning and it would bear the same meaning as was given by this Court in *State of West Bengal v. Subodh Gopal Bose* [(1964) SCR 587] , *Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd.* [(1953) 2 SCC 791 : (1954) SCR 674] *Saghir Ahmad v. State of U.P.* [(1955) 1 SCR 707] and *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay* [(1958) SCR 1122] . In these cases this Court had given a wide meaning to the word “acquisition”. In *Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd.* [(1953) 2 SCC 791 : (1954) SCR 674] Mahajan, J., observed at p. 704 as follows:

“The word ‘acquisition’ has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of.”

He further observed at p. 705:

“I prefer to follow the view of the majority of the Court, because it seems to me that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect.”

Bose, J., observed at p. 734 as follows:

“In my opinion, the possession and acquisition referred to in clause (2) mean the sort of ‘possession’ and ‘acquisition’ that amounts to ‘deprivation’ within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is

unessential. It is the substance that we must seek.”

10. Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to ceiling limits. It is well known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of all the considerations mentioned above the words “acquisition by the State” in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all

the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

11. But the question still remains whether even if a wider meaning is given to the word “acquisition” what has been done by the scheme and the Act is acquisition or not within the meaning of the second proviso. In other words, does the scheme only modify rights or does it amount to acquisition of land? The scheme is not part of the record, but it appears that 89B-18B-11B (Pukhta) of land was owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying cut upon the rightholders on pro-rata basis. It does not appear that any land, apart from what was already owned by the Panchayat, was reserved for providing income to the Panchayat. Therefore, in this case we are not concerned with the validity of acquisition for such a purpose.”

28. A perusal of the aforesaid paragraphs would reveal that in paragraph 6, this Court reproduced the provisions of Article 31-A, as amended.

29. In paragraph 7, this Court carved out 4 categories covered by Article 31-A as under:

- (i) acquisition by the State of an estate;
- (ii) acquisition by the State of rights in an estate;
- (iii) the extinguishment of rights in an estate; and
- (iv) the modification of rights in an estate.

30. Analyzing the said provision, the Constitution Bench held that, in the first two categories, the State “acquires” either an estate or rights in an estate i.e., there is a transference of an estate or the rights in an estate to the State. The Constitution Bench held that when there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. It further held that, if the result in the case of the extinguishment is the transference of all the rights in

an estate to the State, it would properly fall within the expression “acquisition by the State of an estate”. It further held that, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

31. In paragraph 8, the Constitution Bench carved out the difference between “acquisition by the State” on the one hand and “modification or extinguishment of rights” on the other. It held that in the first case, the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State.

32. In paragraph 9, this Court recorded that in the second proviso to Article 31-A, only one category is mentioned i.e., “acquisition by the State of an estate”. It observed that the law must make a provision for the acquisition by the State of an estate. It went on to analyze the true meaning of the expression “acquisition by the State of an estate”. It was sought to be urged

before this Court, that the expression “acquisition by the State” has a very wide meaning and it would bear the same meaning as was given by this Court in a catena of judgments.

33. In paragraph 10, this Court recorded that the second proviso to Article 31-A refers to ceiling limits. It was further observed that the proviso provides that, not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The Court held that the underlying idea of this proviso was that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. The Court held that the words “acquisition by the State” in the second proviso cannot be given a technical meaning, as was contended on behalf of the State. It held that, if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be

said that it is not acquisition within the second proviso to Article 31-A.

34. In paragraph 11, this Court recorded the facts in the said case. It recorded that some of the lands were owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying a cut upon the rightholders on pro-rata basis. It observed that apart from what was already owned by the Panchayat, no other land was reserved for providing income to the Panchayat. As such, the Court was not concerned with the validity of acquisition for such a purpose.

35. It will also be relevant to refer to the following paragraphs of the said judgment in **Ajit Singh**:

“12. Rule 16 (ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, provides:

“In an estate or estates where during consolidation proceedings there is

no *shamlat Deh* land or such land is considered inadequate, land shall be reserved for the Village panchayat and for other common purposes, under Section 18(c) of the Act, out of the common pool of the village at a scale prescribed by the Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of *abadi* of proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as (*Jumla Malkan wa Digar Haqdaran Arazi Hasab Rasad Raqba*). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned.”

It will be noticed that the title still vests in the property body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of

each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate, mentioned above. The proprietors naturally would also share in the benefits along with others.

13. In *Attar Singh v. State of U.P.* [(1959) Supp 1 SCR 928 at p 938] Wanchoo J., speaking for the Court, said this of the similar proviso in a similar Act, namely, the U.P. Consolidation of Holdings Act (U.P. Act 5 of 1954) as amended by the U.P. Act 16 of 1957:

“Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of land are collected from various tenureholders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of Section 14(1)(ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under Rule 41(a) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4)

threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) Panchayatghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land.”

In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal etc. he would not have been able to have them on the fraction of his land reserved for common purposes.

14. Does such taking away of property then amount to acquisition by the State of any land? Who is the real beneficiary? Is it the Panchayat? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to “all the owners and other right holders in proportion to their areas”.

The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore there is no acquisition by the State within the second proviso.

15. In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.”

36. In paragraph 12, after reproducing Rule 16(ii) of the Consolidation Rules, this Court observed that the title still vests

in the proprietary body. However, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. It further held that a fraction of each proprietor's land is taken and formed into a common pool so that the whole area may be used for the common needs and benefits of the estate, mentioned above. It further held that the proprietors naturally would also share in the benefits along with others.

37. In paragraph 14, this Court held that it was clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to “all the owners and other right holders in proportion to their areas”. This Court held that the Panchayat would manage it on behalf of the proprietors and use it for common purposes and that it cannot use it for any other purpose. This Court held that the proprietors also enjoy the benefits derived from the use of land for common purposes. It observed that the non-proprietors also derive benefit but their

satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. This Court held, in light of the facts of the said case, that the beneficiary of the modification of rights was not the State, and therefore there was no acquisition by the State within the meaning of the second proviso.

38. In paragraph 15, this Court, referring to second proviso, held that it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.

39. It can thus be seen that in ***Ajit Singh***, this Court was considering the portion of lands which was taken from the proprietors; formed into a common pool and used for common needs and benefits of the estate or estates concerned. It was held that the said land could not be used for any other purpose. It

has further affirmed that the proprietors also enjoy the benefits derived from the use of land for common purposes.

40. It is further pertinent to note that in **Ajit Singh**, this Court held that the words “acquisition by the State” in the second proviso cannot be given a technical meaning. It has been held that if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the ambit of the second proviso to Article 31-A.

41. Justice M. Hidayatullah (as his Lordship then was) in his minority judgment disagreed with the majority view. He held that when the State acquires almost the entire bundle of rights, it is acquisition within the meaning of the second proviso and compensation at market rates must be given.

42. The third judgment of the Constitution Bench of this Court is in the case of **Bhagat Ram**, which would be the most relevant for the present purpose.

43. It will be relevant to note that judgments in both **Ajit Singh** and **Bhagat Ram** were delivered on the very same day.

44. In the said case (i.e. **Bhagat Ram**), the Court was considering the question, as to whether the reservation of land for income of the Panchayat is acquisition of land by the State within the ambit of the second proviso to Article 31-A?

45. It will be relevant to refer to the following observations of the Constitution Bench of this Court in **Bhagat Ram** in the judgment delivered by Hon. S.M. Sikri, J (as his Lordship then was):

“**2.** The first question that arises is whether the scheme insofar as it makes reservations of land for income of the Panchayat is hit by the second proviso to Article 31-A. The scheme reserves lands for phirni, paths, agricultural paths, manure pits, cremation grounds, etc., and also reserves an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. We have already held in *Ajit Singh case* [(1967) 2 SCR 143] that acquisition for the common purposes such as phirnis, paths, etc., is not acquisition

by the State within the second proviso to Article 31-A. But this does not dispose of the question whether the reservation of land for income of the Panchayat is acquisition of land by the state within the second proviso to Article 31-A. We held in that case that there was this essential difference between “acquisition by the State” on the one hand and “modification or extinguishment of rights” on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. Here it seems to us that the beneficiary is the Panchayat which falls within the definition of the word “State” under Article 12 of the Constitution. The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(*bb*) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines “common purpose” to include the following purposes:

“... providing income for the Panchayat of the village concerned for the benefit of the village community.”

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would

defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly.”

46. It can thus be seen that, this Court held that there was an essential difference between “acquisition by the State” on the one hand and “modification or extinguishment of rights” on the other hand. It was held that in the first case, the beneficiary was the State while in the latter case, the beneficiary of the modification or the extinguishment was not the State. This Court held that since the Panchayat would fall within the definition of the word “State” under Article 12 of the Constitution, if the acquisition is for the purposes of providing income to the Panchayat, it would defeat the whole object of the second proviso. This Court held

that the Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit.

47. The second argument which was advanced before this Court in ***Bhagat Ram*** was that acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964 came into force and therefore the scheme was not hit by the second proviso to Article 31-A. It was sought to be argued that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964.

48. It will be relevant to refer to the following observations of this Court in the majority judgment in ***Bhagat Ram*** while rejecting the aforesaid submissions:

“4. It is clear from this affidavit that possession has not been transferred in pursuance of the repartition. The learned Counsel for the petitioners relies on this fact and says that in view of Section 23-A and Section 24 the “acquisition” does not take place till all the persons entitled to possession of holdings under the Act have entered into possession of the holdings. Sections 23-A and 24 read as follows:

“23-A. As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under Section 18, shall vest in the Panchayat of that village which shall also be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interest of the owners of such lands shall stand modified and extinguished accordingly.

24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition, shall remain

undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-section (2), (3) and (4) of Section 21 or an order passed under Section 36 or 42 of this Act.

(2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act 17 of 1887), for purposes of compliance with the provisions of sub-section (1).”

5. It seems to us clear from these provisions that till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. Not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Mr Gossain, the learned Counsel for the State, tried to meet this point by urging that by virtue of repartition under Section 21, the rights to possession of the new holdings were finalised and could be enforced. This may be so; but this cannot be equivalent to

“acquisition” within the second proviso to Article 31-A.

6. In the result we hold that the scheme is hit by the second proviso to Article 31 A insofar as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, proceed according to law. There would be an order as to costs.”

49. It can thus clearly be seen that the Constitution Bench of this Court in **Bhagat Ram** held that, upon reading of Sections 23-A and 24 of the Consolidation Act it was clear that, till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Though the counsel for the

State tried to urge that, by virtue of repartition under Section 21, the rights to possession of the new holdings were finalized and could be enforced, this Court held that this cannot be equivalent to “acquisition” within the second proviso to Article 31-A of the Constitution of India.

50. The Full Bench of the High Court in the case of **Jai Singh II** has drawn a fine distinction between the land reserved for common purposes under Section 18(c) of the Consolidation Act which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, though they have actually not been put to any common use and may be put to common use in a later point of time on one hand **and** the lands which might have been contributed by the proprietors on pro-rata basis but have not been reserved or earmarked for common purposes in the scheme. It will be relevant to refer to the following observations of the Full Bench of the High Court:

“The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time. In none of the sections or Rules, which have been referred to by us in the earlier part of scheme envisages only such lands which have been utilized. That apart, in all the relevant sections and the rules, words mentioned are ‘reserved or assigned’. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilized or not.

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The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contribute the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant differences is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purposes as per the scheme.

We might have gone into this issue in all its details but in as much as the point in issue is not res-integra and in fact stands clinched by string of judicial pronouncements of this Court as well as Hon'ble Supreme Court, there is no necessity at all to interpret the provisions of the Act and the rules any further on this issue.

The Hon'ble Supreme Court in Bhagat Ram and ors. Vs. State of Punjab and ors. AIR 1967 Supreme Court 927, dealt with reservation of certain area in the consolidation scheme for income of the Panchayat. Brief facts of the case aforesaid would reveal that a scheme made in respect of consolidation of village Dolike Sunderpur was questioned on the ground that in as much as it makes reservation of land for income of the Gram Panchayat, it is hit by second proviso to Article 31-A of the Constitution of India. The scheme in question reserved lands for phirni, paths, agricultural paths, manure pits, cremation grounds etc. and also reserved an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. It was held as under:

“The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(*bb*) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines “common purpose” to include the following purposes:

“... providing income for the Panchayat of the village concerned for the benefit of the village community.”

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly.”

The ratio of the judgment aforesaid would clearly suggest that it is the land reserved for common purposes under the scheme which would be saved, which, otherwise, would be hit by second proviso to Article 31-A of the Constitution of India. Surely, if the land, which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the one which is still left out after providing the land in scheme for common purposes, if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition within

the ceiling limit of an individual without payment of compensation and would offend second proviso to Article 31-A of the Constitution of India.”

51. As has been observed earlier, the Constitution Bench of this Court in ***Bhagat Ram***, in no uncertain terms, held that till possession has changed under Section 24 of the Consolidation Act, the management and control does not vest in the Panchayat under Section 23-A of the said Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Construing this, the Full Bench of the High Court in ***Jai Singh II*** held that, if the land which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the land which is still left out after providing the land under the scheme for common purposes; if it is to vest with the State or Gram Panchayat, the

same would be nothing but compulsory acquisition of land within the ceiling limit of an individual without payment of compensation and would offend the second proviso to Article 31-A of the Constitution of India.

52. It can thus be seen that the judgment of the Full Bench of the High Court in **Jai Singh II** is based basically on the Constitution Bench judgment of this Court in the case of **Bhagat Ram**, which clearly held that, until possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that, not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme.

53. In the **JUR**, except a cursory reference to **Bhagat Ram** in paragraph 11, this Court held that there was no dispute about the said proposition in the present appeals.

54. With great respect, we may state that when the judgment of the Full Bench of the High Court rested on the law laid down by the Constitution Bench of this Court in ***Bhagat Ram***, the least that was expected of this Court in the **JUR** was to explain as to why the Full Bench of the High Court was wrong in relying on ***Bhagat Ram***. However, leave aside the cursory reference in the **JUR** in paragraph 11, there is no reference in the entire judgment to ***Bhagat Ram***. Though this Court in the **JUR** has referred to the Constitution Bench judgments in ***Ranjit Singh*** and ***Ajit Singh***, there is not even a whisper about the Constitution Bench judgment in ***Bhagat Ram***, except in paragraph 11, though it had a direct bearing on the issue in question.

55. The Constitution Bench judgment of this Court in ***Bhagat Ram*** in unequivocal terms held that the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act till possession has changed under Section 24 of the said Act. It further held that, the rights of the holders are

not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. In the said case, the specific contention raised by the State that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964, was specifically rejected by this Court. Needless to state that, all these steps are subsequent to the assignment under Section 18(c) of the Consolidation Act.

56. In the light of these findings of the Constitution Bench of this Court in ***Bhagat Ram***, the finding of this Court in the **JUR** that the vesting in the Panchayat is complete on mere assignment under Section 18(c) of the Consolidation Act is totally contrary to the findings recorded in paragraph 5 of the Constitution Bench judgment in ***Bhagat Ram***.

57. As already discussed herein above, except the cursory reference in paragraph 11 in the **JUR**, this Court has not even referred to the ratio laid down by the Constitution Bench of this Court in paragraph 5 in **Bhagat Ram**. No law is required to state that a judgment of the Constitution Bench would be binding on the Benches of a lesser strength. **Bhagat Ram** has been decided by a strength of Five Learned Judges, this Court having a bench strength of two Learned Judges could not have ignored the law laid down by the Constitution Bench in paragraph 5 in **Bhagat Ram**.

58. We find that ignoring the law laid down by the Constitution Bench of this Court in **Bhagat Ram** and taking a view totally contrary to the same itself would amount to a material error, manifest on the face of the order. Ignoring the judgment of the Constitution Bench, in our view, would undermine its soundness. The review could have been allowed on this short ground alone. However, the matter does not rest at that.

VI. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II REFERRING ITS EARLIER JUDGMENT IN GURJANT SINGH AND SEVERAL OTHER JUDGMENTS

59. It will be relevant to refer to the following observations of the Full Bench of the High Court in *Jai Singh II*:

“Division Bench of this Court, in which one of us (V.K. Bali, J.) was a member, after referring to case law on the subject from 1967 to 1997 in Bhagat Ram vs. State of Punjab, (1967) 69, PLR, 287, Des Raj vs. Gram sabha of Village Ladhot, 1981 PLJ, 300, Chhajju Ram vs. The Joint Director, Panchayats, (1986-1) 89, PLR, 586, Gram Panchayat, Gunia Majri vs. Director Consolidation of Holdings, (1991-1) 99 PLR, 342, Gram Panchayat Sahara (formerly Dhuma) vs. Baldev Singh, 1977 PLJ, 276, Baj Singh vs. State of Punjab (1992-1) 101 RLR, 10, Kala Singh vs. Commissioner, Hisar Division, 1984 PLJ, 169, Joginder Singh vs. The Director Consolidation of Holdings (1997-2) 116 PLR 116, Bhagwan Singh vs. The Director Consolidation of Holdings, Punjab, (1997-2) 116 PLR, 472 and Gram Panchayat,

Village Bhedpura vs. The Additional Director, Consolidation, (1997-1) 115 PLR, 391, held that the Bachat land, i.e., land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat". It was further held that "the unutilized land after utilizing the land earmarked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes". There is no need to give facts of the judicial precedents relied upon in Gurjant Singh's case (supra) as the same stand mentioned already therein and reiteration thereof would necessarily burden this judgment.

The decision of Division Bench of this Court in Gurjant Singh's case (supra) was tested, at the instance of the State of Punjab, in Civil Appeal No. 5709-5714 of 2001. Only, the general directions given in the judgment recorded in Gurjant Singh's case (supra) for distribution of land to the proprietors were set aside and that too on the concession of learned counsel, who represented the Respondents in the case aforesaid. Order passed by the Hon'ble Supreme Court on August 27, 2001, reads thus:-

“Leave granted.

Mr. Harsh N. Salve, learned Solicitor General, submitted that the State of Punjab takes objection only in regard to the following observations made in the impugned judgment:-

“This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh, even though there is a specific provision for doing that.

This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-compliance of directions referred to above.”

Learned counsel for the Respondent submits that they had no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals to be extent of deleting of the above said passage from the impugned judgment.

These appeals are disposed of accordingly.”

60. It is thus clear that the Full Bench of the High Court has referred to the judgment of the Division Bench of the said Court in the case of **Gurjant Singh**.

61. It is pertinent to note that in the case of **Gurjant Singh**, the Division Bench of the High Court had noted a series of judgments delivered by the said High Court relying on the law laid down by the Constitution Bench of this Court in **Bhagat Ram**. All these decisions had held that the land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat. It was further held that the unutilized land i.e., the Bachat land, left after utilizing the land earmarked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes.

62. It is to be noted that the **JUR** referred to the judgment in the case of **Gurjant Singh** and the order passed by this Court in Civil Appeal Nos.5709-5714 of 2001, wherein the State had objected only with regard to the observations wherein the time limit was provided for effecting redistribution of the Bachat land amongst the proprietors according to their share.

63. It is thus clear that the State itself did not press the appeals with regard to the directions for redistribution of the Bachat land amongst the proprietors according to their share. Its only grievance was with regard to the directions to do it within a specified period of time. However, this Court in the **JUR** held that the doctrine of merger would not be applicable. However, we do not wish to go into the correctness of that finding since we are sitting in review jurisdiction.

64. The **JUR** referred to various judgments of the Punjab & Haryana High Court which took the view that the Bachat lands are entitled for redistribution. The **JUR** cursorily observed in

paragraph 84 that the findings recorded by the different Benches of the High Court are clearly erroneous and not sustainable. When a catena of judgments were delivered by the various Benches of the High court relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram***, the least that was expected in the **JUR** was a reasoning as to how the findings of the various Benches of the High Court including in ***Gurjant Singh***, relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram***, are erroneous.

65. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in ***Jai Singh II***, which findings were given by relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram***, and not showing as to how the findings therein were erroneous in law, would also amount to an error, apparent on the face of the record.

VII. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II WITH REGARD TO DOCTRINE OF STARE DECISIS

66. Thirdly, the Full Bench of the High Court in ***Jai Singh II*** in the alternative held that, a consistent view has been taken in more than 100 judgments by the Punjab & Haryana High Court and applying the doctrine of *stare decisis*, such a view cannot be upset. While holding so, the Full Bench of the High Court has relied on various judgments of this Court as well as the various High Courts. However, in the **JUR**, there is not even a reference to the reasoning given by the Full Bench of the High Court with regard to the applicability of the doctrine of *stare decisis*. There are catena of judgments of this Court explaining the doctrine of *stare decisis* and its application. However, we do not propose to go into them since the scope in review jurisdiction is limited. We do not wish to go into the question as to whether the doctrine of *stare decisis* would be applicable in the facts of the present case or not. However, the least that the **JUR** was expected was to consider the reasoning given by the Full Bench of the High Court and to consider as to how the said reasoning was not sustainable

in law. However, the **JUR** does not even refer to the said discussion in its judgment.

67. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in **Jai Singh II**, that on account of more than 100 decisions rendered by various Benches of the High Court, the doctrine of *stare decisis* is applicable, would also be an error apparent on the face of the record.

VIII. CONCLUSION

68. In that view of the matter, we are of the considered view that the **JUR** needs to be recalled on the aforesaid grounds mentioned by us.

69. In the result, we pass the following order:

- (i) The Review Petition is allowed.
- (ii) The judgment and order of this Court dated 7th April 2022 in Civil Appeal No. 6990 of 2014 is recalled and the appeal is restored to file.

(iii) The appeal is directed to be listed for hearing peremptorily on 7th August 2024 at Serial No.1.

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

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
MAY 16, 2024**