BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Original Application No. 914/2022

In the matter of:

Kamlesh Jonwal ..... **Petitioner**

Versus

Uday Punj & Ors. ..... **Respondents**

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DATED: 06.02.2024

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BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Original Application No. 914/2022

In the matter of:

Kamlesh Jonwal ..... Petitioner

Versus

Uday Punj & Ors. ..... Respondents

REPLY ON BEHALF OF RESPONDENT NO. 1 TO THE STATUS REPORT CUM AFFIDAVIT FILED BY RESPONDENT NO. 2/DDA DATED 13.12.2023 & 08.01.2024.

I, Uday Punj, S/o Late Sh. Satya Narain Prakash Punj, aged about 62 yrs., R/o Chimes, 55 Sultanpur Farms, New Delhi, do hereby solemnly affirm and state as under:

That I am Respondent No. 1 in the present petition and am well acquainted with the facts and circumstances of the present case and as such, competent to make and affirm the present reply to the affidavit. I have gone through the Status Report cum Affidavit filed by Respondent No. 2, and the reply to the same is as under:-

MOST RESPECTFULLY SHOWETH:

A. Preliminary submissions

1. It is an admitted and undisputed fact that as per order dated 23-02-2015 passed by Hon'ble High Court of Delhi in W.P.(C) No. 6390/2014 which has been upheld by Hon'ble Supreme Court of India on merits by dismissing SLP No. 32365/2015 - Civil Appeal No. 4590/2016 filed by Respondent No.2 vide order dated 28-04-2016 and also dismissal of Review Application vide its order Dated 31.03.2022 followed by Misc. Application Diary No. 4543/2023 dated 21.08.2023 filed by Respondent No. 2/DDA, also rejected by the Hon'ble Supreme Court and these have all attained finality. The relevant details are in the ensuing paragraphs.

   A copy of the order dated 23-02-2015 is annexed herewith as **Annexure 1.**

2. That, it would be relevant to state here that the Land Acquisition Collector and Land & Building Department has admitted in the Counter filed by it in W.P (C) No. 6390/2014 before Hon'ble High

Court of Delhi, that the possession of the land was never taken. The relevant text of para 8 of which reproduced as under:

That as regards status of possession and compensation, it is humbly submitted that, as stated above, the possession of the land in question was not taken due to stay from this Hon'ble High Court in W.P. (C) No. 1802/1980 and the compensation amount was sent to revenue deposit on 29.08.1981".

A copy of the Counter affidavit filed by Collector and Land & Building Department is annexed herewith as **Annexure 2.**

3. That against the judgment dated 23.02.2015 passed in W.P (C) No. 6390/2014, Respondent No. 2 filed SLP (Civil) No. 32635/2015(Civil Appeal No. 4590/2016) before Hon'ble Supreme Court of India. A copy of the SLP is annexed herewith as **Annexure 3.** Hon'ble Supreme Court vide judgment dated 28.04.2016, upheld the order passed by the Hon'ble High Court of Delhi.

A copy of the judgment is annexed herewith as **Annexure 4.**

4. The Secretary, Land & Building Department, GNCT challenged the order passed by Hon'ble High Court of Delhi in W.P.(C) 6390/2014 before Hon'ble Supreme Court through SLP No. 36656/2016 – Civil Appeal No. 12113/2016. A copy of the SLP is annexed herewith as **Annexure 5**. Hon'ble Supreme Court dismissed the Appeal vide judgment dated 8th December 2016, lead Civil Appeal No. 4544 of 2016, following the judgment dismissing Civil Appeals filed by Respondent No. 2 on the identical issues by Hon'ble Supreme Court by judgment dated 28-04-2016. A copy of the judgment dated 08-12-2016is annexed herewith as **Annexure 6**.

5. That, Respondent No. 2 filed a Review (Civil) diary No. 27968 of 2021 (SLP No. 32635/2015 (Converted into Civil Appeal No. 4590/2016)) annexed herewith as **Annexure 7**, which was dismissed by a **speaking order** dated 31.03.2022, **both on merits and limitation**, copy of which is annexed herewith as **Annexure 8**. In this petition, Respondent No. 2 clearly mentioned that they took possession in 2007; however, the same was dismissed on merit.

6. Respondent No.2 filed another Misc. Application (vide diary No. 4543 of 2023) for recall of Order challenging the judgment dated 28.04.2016 as also sought dismissal of the Review Application. A copy is annexed herewith as **Annexure 9**, which Misc Application was also dismissed by the Hon'ble Supreme Court of India vide order dated 21.08.2023. A copy of the order dismissing the Misc Application is annexed herewith as Annexure **10.** In this petition Respondent No. 2 has clearly mentioned that the possession was taken over by them in 2007 but still the Misc Application was dismissed on merits.

7. Thus, the judgment of the Hon'ble High Court of Delhi as upheld by the Hon'ble Supreme Court has attained finality and all possible remedy sought by Respondent No 2 are exhausted. The respective judgments dated 23.02.2015 and 28.04.2016 are final conclusive and determinative on the issue of lawful possession of Respondent No. 1 herein on the subject land. This issue interse the parties has attained finality and is barred by the principle of res judicata.

8. Thus, it is matter of record that area under reference was never acquired by Respondent No.2 even after grant of one-year period by

the Hon'ble Supreme Court for reasons best known to it, and therefore Respondent No. 2 had given up its rights. Thus, the issue between Respondent No.1 and Respondent No.2 stands concluded against Respondent No. 2. Consequently, Respondent No. 1 is the lawful owner of the land on which Respondent No. 2 has illegally constructed Pump House and Commercial Complex and had allegedly allotted a parcel of Respondent No. 1's Land for construction of a Police Station. The issue of the construction of the Commercial Complex and its auction and allotment of land for the construction of the Police Station is the subject matter of CS (OS) 244/2020 before The Hon'ble High Court of Delhi. So far as Barat Ghar is concerned it has never been constructed at all till date.

9. All aforesaid facts have been concealed by Respondent No.2 while filing status Reports as directed by this Hon'ble Tribunal.

10. Respondent No. 2 has concealed all these material facts from this Hon'ble Tribunal for reasons best known to it and is trying to build up a new case despite knowing that the issue has been hit by a Bar by way of *'res judicata'*. Reliance is placed on the following landmark judgments:-

(a) **Iftikhar Ahmed v. Syed Meharban Ali, (1974) 2 SCC 151 at page 155**

13. Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit; and (3) that the Court actually decided the question.

15. We see no reason why a previous decision should not operate as resjudicata between co-plaintiffs if all these conditions are mutatis mutandis satisfied. In considering any question of resjudicata we have to bear in mind the statement of the Board in Sheoparsan Singh v. Ramnandan Prasad Narayan Singh [AIR 1916 PC 78 : 43 IA 91 : ILR 43 Cal 694] that the Rule of res judicata "while founded on ancient precedent is dictated by a wisdom which is for all time" and that the application of the Rule by the Courts "should be

influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".

"The raison d'etre of the Rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest; and to allow persons who had deliberately chosen a position to reprobate it and to blow hot now when they were blowing cold before would be completely to ignore the whole foundation of the Rule." (See Ram Bhaj v. Ahmad Said Akhtar Khan [AIR 1938 Lab 571 : 178 IC 302: 40 Punj LR 591]).

(b) **M. Nagabhushana v. State of Karnataka, (2011) 3 SCC 408: (2011) 1 SCC (Civ) 733: 2011 SCC OnLine SC 277 at page 418**

19. A Constitution Bench of this Court in Devilal Modi v. STO [AIR 1965 SC 1150], has explained this principle in very clear terms: (AIR p. 1152, para 7]

"7. ... But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens'

fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide Daryao v. State of U.P. [AIR 1961 SC 1457:(1962) 1 SCR 574])."

"20. This Court in AIMO case [(2006) 4 SCC 683] explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in AIMO case [(2006) 4 SCC 683] relied on the following formulation of Somervell, L.J. in Greenhalgh v. Mallard [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (AIMO case [(2006) 4 SCC 683], SCC p. 700, para 39)

"39. ... I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is

not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter ofthe litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.'"

(emphasis supplied in AIMO case [(2006) 4 SCC 683])

The Bench in AIMO case [(2006) 4 SCC 683] also noted that the judgment of the Court of Appeal in Greenhalgh [(1947) 2 All ER 255 (CA)] was approved by this Court in State of U.P. v. Nawab Hussain [(1977) 2 SCC 806: 1977 SCC (L&S) 362], SCC at p. 809, para 4.

21. Following all these principles a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715: 1990 SCC (L&S) 339:(1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)

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

23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in K.K. Modi v. K.N. Modi [(1998) 3 SCC 573]. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p. 592)

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

24. In coming to the aforementioned finding, this Court relied on The Supreme Court Practice, 1995 published by Sweet & Maxwell (p. 344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (K.K. Modi case [(1998) 3 SCC 573], SCC p. 592, para 43)

"43. ... 'This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but

depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.

25. On the premises aforesaid, it is clear that the attempt by the appellant to reagitate the same issues which were considered by this Court and were rejected expressly in the previous judgment in AIMO case [(2006) 4 SCC 683], is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto.

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

(c) **S. RAMACHANDRA RAO vs. S. NAGABHUSHANA RAO & ORS., in APPEAL NOS. 7691- 7694 OF 2022 judgement dated 19th October 2022**

Para 10 For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well-regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.

(d) **Shramjeevi Cooperative Housing Society Ltd. Versus Dinesh Joshi and Others [2023 SCC OnLine SC 316]:**

20. It is too well settled that parties are bound by the principle of finality, which results in a decree by a competent court, acquiring a final and binding nature, especially where it is confirmed concurrently and upheld by the highest court of the land. In Pradeep Kumar Maskara v. State of West Bengal[2] this aspect was stated, in the following terms:

> *"24. At the very outset, we are of the view that the Tribunal has no jurisdiction to differ with the decision given by the Calcutta High Court in the writ petition filed by the appellants. The Tribunal further committed grave error in following the decision in Ganga Dhar Singh case [Ganga Dhar Singh v. State of W.B.,(1997) 2 CHN 140] treating it to be a Division Bench judgment of the Calcutta High Court when as a matter of fact the decision in Ganga Dhar Singh case [Ganga Dhar Singh v. State of W.B., (1997) 2 CHN 140] was decided by a Single Judge of the High Court. Even the judgment passed [Pradip Kumar Maskara v. State of*

W.B., Civil Revision No. 3465 (W) of 1984, decided on 8-11-1992 (Cal)] in the appellant's writ petition filed in 1984 was neither considered nor distinguished.

25. In the background of these facts, in our considered opinion, when the judgment rendered by the Calcutta High Court in the case of the appellants and the said decision having not been quashed or set aside by a larger Bench of the High Court or by this Court, the Tribunal ought not to have refused to follow the order of the High Court.

26. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not be a ground for review of such judgment merely because a subsequent judgment of the Single Judge has taken contrary view. That does not confer jurisdiction upon the Tribunal to ignore the judgment and direction of the High Court given in the case of the appellants."

Thus, in view of the aforesaid submissions, it is conclusively established that the issue being raised by Respondent No. 2 is hit by bar of *res-judicata*.

The copies of the aforesaid judgments are annexed herewith as **Annexure 11 (Colly).**

11. The conduct of Respondent No. 2 stands established in the status Report dated 29th August 2023, filed by Municipal Corporation of Delhi, wherein at page no. 76, it has been admitted that the land for maintaining green belt was handed over by Respondent No. 2 on 31-05-2016, which is after dismissal of Civil Appeal No. 32635/2015 – Civil Appeal No. 4590/2016 vide judgment dated 28-04-2016, filed by Respondent No.2. Such handing over of land not belonging to the Respondent no 2 is blatantly illegal and an intrusion of the right to private property.

Issue before this Hon'ble Tribunal

12. The complaint of the applicant is for the alleged felling of trees and construction of a boundary wall on the so-called Green Belt under the Environment (Protection) Act, 1986; and to restrain Respondent 1 from constructing a boundary wall. It has been conclusively established by way of various orders, as explained in previous submissions, that have achieved finality leading to the fact that the land remains private property which could not have been handed over by Respondent no. 2 (DDA) to MCD for development as a Green belt on 31.5.2016 after pronouncement of judgement of the Hon'ble Supreme Court of India on 28.4.2016. Accordingly, it is for this Hon'ble Tribunal to decide only if any illegal felling of trees has indeed happened. Further, the Hon'ble Tribunal has already, in day-orders, stated that private land could be protected by way of boundary way by the land owner.

13. The Answering respondent confirms that there has been no illegal felling of trees by him in the construction of the boundary wall.

14. That' Hon'ble Tribunal on 12th January 2023 after hearing the parties filed a detailed order, relevant text of which is reproduced as under:-

5. Written Submissions on behalf of respondent no. 1 have been filed vide email dated 10.01.2023.

6.The applicant has also filed written submission vide email dated 10.01.2023.

7. The learned counsel for respondents no 2 and 5 seek adjournment for filing reply/response on their behalf.

8. Reply/response on behalf of respondents no. 2 and 5 be filed within three weeks by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF. In their **reply/response** respondents no 2 and 5 shall specifically mentioned **whether the land in question falls within the khasra numbers claimed by respondent no. 1 to be owned and possessed by him.** Respondents no. 2 and 5 are also directed to produce the relevant land record through their officials in this regard.

9. List for further consideration on 10.02.2023.

10. In the meanwhile, respondent no. 5- the District Magistrate (South West) Delhi is ***directed to get the land in question demarcated through the concerned Revenue officials after notice to the applicant, respondent no. 1 and officials of DDA and MCD.***

11. The respondent no. 1 will be entitled to continue with the construction if on such demarcation the land in question falls in khasra numbers owned and possessed by him. However, respondent no. 1 is directed not to cut trees, if any existing in the land in question, without obtaining requisite permission from the concerned Authorities in accordance with law.

15. Though, Hon'ble Tribunal had permitted Respondent No.1 to carry out construction on the land bearing khasra numbers owned by it, but, awaited report from SDM and District Magistrate confirming the Khasra numbers. Respondent No.2, instead of verifying the Khasra numbers as alleged in the Original Application, is trying to build a new case by expanding the scope of the Original Application, for reasons best known to it and create confusion.

16. Since the complaint is restricted only to the green belt on both sides of the road connecting Kaveri and Yamuna Apartment to Masoodpur Market. Thus, a dispute has been raised by the Applicant invoking section 14 of the National Green Tribunal Act, 2010, the relevant text of which is reproduced as under: -

> *(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.

17. **Bar of Limitation**: The Applicant has raised dispute of Green Belt on the land owned by the Respondent No.1 as per the Supreme Court judgment and order dated 28-04-2016. As such the original application is barred by limitation because the Applicant was aware of the fact of lapse of acquisition as is evident from the prayer.

18. Further, by dismissing the Civil Appeal No.12113/2016 in SLP No. 36656/2016 filed by the GNCT of Delhi through Secretary, Land and Building Department vide judgment dated 8th December 2016 further settled the issue in favour of Answering Respondent.

19. Consequently, the disputes raised by the Applicant are not the subject matter of Schedule I in view of the fact of ownership of land in favour of Respondent No.1 that has been settled by the Hon'ble Supreme Court. Since this is private land, the dispute raised in the present

proceedings cannot be adjudicated. Reliance is being placed on the following judicial precedents:

i. **Muslim Kassar Vikas Sangthan (Regd.) Versus Delhi Development Authority and Others [2020 SCC OnLine NGT 867]:**

> *2. We find that the grievance in the application does not fall in the jurisdiction of this Tribunal under Sections 14 and 15 of the National Green Tribunal Act, 2010. Such jurisdiction can be invoked by a victim of pollution for restoration of environment or for compensation to the victim. Such an issue is not shown to be involved in the matter.*
>
> *The application is disposed of as not maintainable.*

ii. **Nigam Priyae Saroop Versus State of Jammu and Kashmir & Ors. [2017 SCC OnLine NGT 1032]:**

> *38. A look to the relevant provisions of NGT Act, 2010 would show that this Tribunal has jurisdiction where any question arises as to implementation of the enactment which has been enumerated in Schedule I. Relevant provisions of the Act of 2010 is as under:*

'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.'

SCHEDULE I

'[See Sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1))

1. The Water (Prevention and Control of Pollution) Act, 1974;

2. The Water (Prevention and Control of Pollution) Cess Act, 1977;

3. The Forest (Conservation) Act, 1980;

4. The Air (Prevention and Control of Pollution) Act, 1981;

5. The Environment (Protection) Act, 1986;

6. The Public Liability Insurance Act, 1991;

7. The Biological Diversity Act, 2002'.

39. In other words, the Tribunal has jurisdiction over civil cases where a substantial question relating to environment is involved which arises out of enforcement of the aforesaid seven enactments as given in the Schedule. The Tribunal is to settle disputes, under Section 14 of the Act in all civil cases where substantial question relating to environment is involved. It is important to note that the conjuncture 'and' used in the later part of the provision has significance. The civil cases involving substantial question relating to environment must be the one which arises out of implementation of the enactments given in the Schedule namely; Water (Prevention and Control of Pollution) Act, 1974, Water (Prevention and Control of Pollution) Cess Act, 1977, Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991 and Biological Diversity Act, 2002.

This view finds support in the principle of law laid down by the Hon'ble Supreme Court in the case of Bhopal Gas

Peedith Mahila Udyog Sangathan v. Union of India, (2012) 8 SCC 326 the Hon'ble Court held that:

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT")."

iii. **MUNICIPAL CORPORATION OF GREATER MUMBAI VERSUS ANKITA SINHA & ORS. [CIVIL APPEAL NOS. 12122-12123 OF 2018]:**

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon Standard Chartered Vs. Dharminder Bhohi wherein, provisions of the Recovery

of the Debts Due to Banks and Financial Institutions Act, 1993 were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in Transcore Vs. Union of India, opined on behalf of a Division Bench that,

> *" 67.... The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."*

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in Rajeev Hitendra Pathak V.s. Achyut Kashinath4, observed as under:

> *"34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."*

11.1 The second limb of contention is that the Act is applicable to 'disputes' as, necessarily referring to a lis between two parties. The counsel has relied upon Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.5 wherein the term 'substantial question relating to environment' was interpreted in an attenuated fashion to mean a

question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,"

19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20....In Prabhakar v. Deptt. of Sericulture [Prabhakar v. Deptt. of Sericulture, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)

"34. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:' "Dispute".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'

35. Black's Law Dictionary, 5th Edn., p. 424 defines "dispute" as under: 'Dispute.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.' "

11.2 The amicus curiae has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of

Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb suo motu powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.,6 Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> *"41. ..Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B 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.....

43. ...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 Powers, Privileges and Immunities of State Legislatures, In re [Powers,

Privileges and Immunities of State Legislatures, In re, (1965) 1 SCR 413: AIR 1965 SC 745], made in the following words: (SCR p. 499: AIR p. 789, para 138)

"138. 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]'."

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 [BSNL v. TRAI, (2014) 3 SCC 222], 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 17-7-2014 in Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests, 2014 SCC OnLine NGT 6860] 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."

12.2 The argument has been that the superior Courts exercising discretionary powers under Article 32 and

Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any suo motu exercise.

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25.3 The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the

NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention or may be a situation calling for decisions to meet certain exigencies, the functions under Section

14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

25.5 The other pertinent provisions relating to, inter-alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

The copies of the aforesaid judgments are annexed herewith as **Annexure 12 (Colly)**.

20. Thus, the issue raised in the complaint is restricted to a very specific and small part of land, which is private land owned by Respondent No.1, and seeking removal of the brick wall alleging enclosure of open green spaces is without any substance. The photographs of the area are annexed herewith as **Annexure 13 (Colly)**.

21. It is important to state here that it is an admitted position that DDA, while contesting Writ Petition (C) 6390/2015 before the Hon'ble High Court of Delhi, being Respondent No.2 therein, for a reason best known to it, did not file Counter Affidavit.

22. That the grounds mentioned in the status report and reliance on the judgment pronounced by the Hon'ble Supreme Court in the case of **Indore Development Authority vs. Manoharlal & Others, SLP (C) NO. 9036 -9308 of 2016** was also part of the pleadings by Respondent No.2 **(DDA)** while filing Review (Civil) diary No. 27968 of 2021 (SLP No. 32635/2015, before Hon'ble Supreme Court The relevant text of the grounds is reproduced as under: -

QUOTE

NOTARY Reg No 337 BHIM SINGH INDORA DELHI GOVT OF INDIA

GROUNDS

The instant Review Petition rests inter-alia on the following grounds namely,

A. *Because this Hon'ble Court vide the Judgment dated 6.3.3030 passed in Indore Development Authority case (supra) overruled the Judgment passed in Pune Municipal Corporation Case and the judgments of all the other cases where the Pune Municipal Corporation case (supra) was relied upon;*

B. *Because the Hon'ble High Court interpreted section 24(2) of 'the Act of 2013' and decided the matter on the basis of Pune Municipal Corporation (supra) case and this Hon'ble Court differed by the said decision in the case of Indore Development Authority Vs. Shailendra (dead) Th. LRs; (2018) 3 SCC 412. This Hon'ble Court while referring the matter to larger bench specifically held that the matters decided on the basis of Pune Municipal Corporation (supra) case are open to be reviewed.*

C. *Because the possession of land in this case was taken as on 21.4.2007 and in accordance to the interpretation of section 24 of 'the Act of 2013' in the case of Indore Development Authority (supra), the acquisition proceeding shall not lapse;*

D. *Because the judgment dt. 23.3.2015 passed by Hon'ble High Court is relied upon the Judgment passed by this Hon'ble Court in Pune Municipal Corporation (supra) and since the case of Pune Municipal Corporation (supra) in itself declared per incuriam hence, the judgment of Writ Court ought to be considered afresh in accordance with established position in Indore Development Authority (supra) case.*

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UNQUOTE

23. That, the relevant text of Misc. Application diary No. 4543 of 2023 filed by Respondent No.2 (DDA) for Recall of Order dated 28th April 2016, filed by in Hon'ble Supreme Court of India is as under:

"5. That it is submitted that the present Application is being preferred by the Petitioner in view of the recent landmark judgment of this Hon'ble Court in Indore Development Authority vs Manoharlal & Ors., (2020) 8SCC 129 (hereinafter referred to as Indore Development Authority Judgment) which has finally settled the law regarding acquisition proceedings. In the said Constitutional Bench judgment, this Hon'ble Court has defined the ambit and scope of Section 24(2) of the Land Acquisition Act, 2013 which now governs this field and therefore, the present Petition raises substantial question of law in light of the same.

8.That it is submitted that on 08.02.2018, a Three Judges Bench of this Hon'ble Court passed a judgment in the case of Indore Development Authority Vs. Shailendra (dead) Th. LRs; 2018 (2) SCALE 1 thereby laying down the effect, scope and impact of Section 24 of the Act of 2013, particularly the proviso to under Section 24(2). This Hon'ble Court held that the decision in the case of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki, 2014 (3) SCC 183, is per incuriam and further held as follows:

"217. The decision rendered on the basis of Pune Municipal Corpn. are open to be reviewed in appropriate cases on the basis of this decision."

10.The Constitutional Bench of this Hon'ble Court has finally settled the law in the case of Indore Development thereby laying down the effect, scope and impact of Section 24 of the Act of 2013, by holding that Section 24 of the Act of 2013 does not revive stale and time barred claims and does not reopen concluded proceedings.....

That, since in the instant case the compensation has been paid and even possession has been taken of the major portion of the land, the instant case is covered by the Indore Development Judgment. It is submitted that the amount of compensation in respect of the acquisition was deposited in the treasury and thus it amounted to deposit "in any account maintained for this purpose", thus the entire period during which the amount was lying in the treasury ought to have been excluded. Apart from that, even the physical possession of the land comprising in Khasra No. 67, 86, 88, 479/396/87 admeasuring 30 Bighas 14

Biswas has already been taken over and handed over to the Petitioner Authority on 21.04.2007 by the LAC/L&B. Therefore, the instant case satisfies both the ingredients of the Indore Development Judgment (supra) and hence the order of the Hon'ble Court deserves to be set aside".

24. **That, in view of the fact of non-disclosure of dismissal of Civil Appeals, Review Application and Miscellaneous Application by Hon'ble Supreme Court, advancing the same grounds before this Hon'ble Tribunal, which were considered and rejected by Hon'ble Supreme Court, is a clear case of misleading this Hon'ble Tribunal and is a deliberate attempt on the part of Respondent No.2 to build a new case and cause prejudice against answering Respondent as also wasting precious judicial time.**

25. It is reiterated that Respondent No. 1 has complied with the orders of the *status quo* passed by this Hon'ble Tribunal and did not carry out any construction activity.

26. The Areas stated as Site No. 2 to 6 in the Report filed by Respondent No. 2/DDA do not relate to the present OA. These sites are subject

matter of ongoing litigation before Hon'ble High Court of Delhi in CS(OS) 244/2020 filed by the Respondent No.1, restraining the Respondents from:-

(a) E-auctioning of Built-up Units/Shops which has been constructed on land owned by answering Respondent.

(b) Construction of Proposed Police Station as the ownership of the land in question rests with Respondent No.1.

B. Reply to Status Report cum Affidavit dated 13.12.2023.

1. That vide Order dated 20.11.2023 this Hon'ble Tribunal constituted a Joint Committee comprising of the Officers duly authorized by the Vice Chairman, DDA, District Magistrate (New Delhi) and Commissioner, Municipal Corporation of Delhi to demarcate the land of Kaveri Apartments and land of Respondent No. 1 and submit report specifically mentioning as to whether any part of Kaveri Apartment, green belt connecting to the end gate of said apartment and public facilities drinking water/gas pipelines/ sewage etc. fall into the land belonging to respondent no. 1.

2. That, Respondent No. 2 has filed Status Report cum Affidavit dated 13.12.2023, for reasons best known to it, has with malafide intent included the areas which are not subject matter of the application before this Hon'ble Tribunal; and also without specifying the name of the owner of Khasra No. 93. Further, there is no Barat Ghar even as on today.

3. Respondent No. 2 has submitted the TSS plan relevant text of which is reproduced as under:

Site 01 (Area under Green): This site is adjacent to the service road connecting Exit gate (Kaveri Apartment) and Vasant Kunj Road and in the right while going towards Exit gate (Kaveri Apartment). Area measuring 384.88 sqm in ***Khasra No. 93*** *and 989.37sq. in* ***Khasra No. 87*** *is under Green Belt.*

Site 02 (Area under Green): This site is adjacent to the service road connecting Exit gate (Kaveri Apartment) and Vasant Kunj Road and in the left while going towards Exit gate (Kaveri Apartment). Area measuring 1159.648 sqm in ***Khasra No. 87*** *is under Green Belt.*

Site 03 (Area under Pump House, Kaveri Apartment): Area measuring 587.134 sqm is under pump house in ***Khasra No. 87 min, 88 min & 93 min.***

Site 04 (Area under Barat Ghar, Kaveri apartment): Area measuring 1601.024 sqm is under Barat Ghar in ***Khasra No. 88 min, 89 min and 93 min.***

Site 05 (Area under DDA market): Area measuring 1168.020 sqm is under DDA market in ***Khasra no. 88 min & 89 min.***

Site 06 (Area proposed for Police Station): Area measuring 12326.05 sqm in ***Khasra no. 86 min, 88 min& 67 min*** *is lying vacant at the site and is partly under green.*

4. That, as submitted in the preliminary submissions, for reasons best known to them, both the Applicant and the Respondent No. 2 are misleading this Hon'ble Tribunal and trying to expand the scope of the O.A. beyond the prayers.

5. That, at the cost of repetition, it is reiterated that the issue involved in present O.A. 914/2022 is limited to verification of Khasra No. of area adjacent to entry road of Kaveri Apartments and Yamuna Apartments and nothing else.

6. Further, Respondent No. 2 despite in know of the fact of dismissal of SLP filed by it, still went ahead and has allegedly handed over the area to Municipal Corporation of Delhi on 31-05-2016, for developing Green Belt, (Page 76 of status report filed by MCD) in brazen violation of the judgment dated 23-02-2015 pronounced by Hon'ble High Court of Delhi and Judgment of the Hon'ble Supreme Court dated 28-4-2016. Such act is void ab-initio.

7. Further despite dismissal of Review Petition and Miscellaneous Application, filed by Respondent No.2 (DDA) settling the issue of ownership of land in favour of Answering Respondent, it has audacity to raise the same issues before Hon'ble Tribunal.

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8. That it is pertinent to mention herein that raising the issue of possession not taken by Department of Land and Building, GNCT of Delhi or possession taken by Respondent No. 2 is irrelevant and out of

context as the same has been settled by Hon'ble Supreme Court both on merits and limitation vide its Judgment dated 28-04-2016 and dismissal Order dated 31-03-2022 of Review (Civil) diary No. 27968 of 2021 (SLP No. 32635/2015) filed and Order dated 21-08-2023 passed on the Misc Application vide diary No. 4543 of 2023.

9. Therefore, it is not open for Respondent No. 2 to raise the same issue again before this Hon'ble Tribunal. Despite having knowledge of the issue being settled by Apex Court against them. It is a clear case of misleading this Hon'ble Tribunal.

10. That Respondent No. 2 has made an unsubstantiated allegation that Answering Respondent has violated the Order dated 13.12.2023 of this Hon'ble Tribunal by cutting down the trees in the area in question without specifying the date and time and naming the person who had cut the trees. Respondent No. 2 must be put to strict proof of the false statement being made before this Hon'ble Tribunal.

C. **Reply to Status Report dated 08.01.2024.**

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1. At the cost of repetition, it is reiterated that in W.P (C) No. 6390/2014, filed before Hon'ble High Court of Delhi, Respondent No. 2 (DDA), did not file Counter Affidavit to the Writ Petition; as well as no response/reply was filed by Respondent No 2 (DDA) to the Counter Affidavit filed by Land Acquisition Collector, Land & Building Department in W.P (C) No. 6390/2014 in para 8 stated that as under:

> *"That as regards status of possession and compensation,* ***it is humbly submitted that, as stated above, the possession of the land in question was not taken due to stay from this Hon'ble High Court in W.P. (C) No. 1802/1980*** *and the compensation amount was sent to revenue deposit on 29.08.1981".*

2. As is evident from the aforesaid statement, by the Land Acquisition Collector & Land Building Department (LAC) admitting before Hon'ble High Court, that it did not take possession, hence the Respondent No. 2 could not have taken possession, as the LAC themselves has not taken possession. This plea was once again reiterated in SLP (Civil) 36656/2016 by the Secretary, Land Acquisition, and it did not find favour; consequently, SLP was dismissed by the Hon'ble Supreme Court.

3. Respondent No.2, while challenging the Hon'ble Delhi High Court judgment dated 23-02-2015 in the SLP No. 32635/2015 – Civil Appeal No. 4590/2016 before the Hon'ble Supreme Court, did not whisper about taking possession on 21-04-2007. It can be seen that the LAC themselves have stated in the case that they did not take possession. Further, while filing Review (Civil) diary No. 27968 of 2021 (SLP No. 32635/2015, for the first time they took the ground of taking possession on 21-04-2007, which Hon'ble Supreme Court rejected vide order dated 31-03-2022, both **on merits and limitation**. The Respondent No 2 (DDA) again made a further Misc. Application to the Hon'ble Supreme Court was again denied by the Hon'ble Supreme Court vide order dated 21-08-2023.

4. Thus, on a private property owned by Respondent No.1 as upheld by multiple judgements by the Hon'ble Supreme Court upholding judgement dated 23-02-2015 of the Hon'ble Delhi High Court, has illegally constructed Pump House, Road and an alleged development of Green Belt by Respondent No. 2 as stated in the Status Report dated 08.01.2024.

5. That Respondent No.2 has claimed to have handed over land for the development of Green Belt to the Municipal Corporation of Delhi on 31-05-2016 despite having pre-dated judgements of 23.02.2015 passed by Hon'ble Delhi High Court and Judgment dated 28.04.2016 pronounced by Hon'ble Supreme Court. This clearly demonstrates that Respondent No.2 has no respect for the orders passed by the jurisdictional High Court as well as the Supreme Court of India and considers itself as an authority above the law in a blatant challenge of due process of law. The document filed is hand-written and does not inspire confidence about its genuineness as it also lacks the presence of the Landowner or an independent public witness.

6. Further, the Status Report filed by Respondent No. 2 is silent on the disclosure of dates of construction of a Pump House, Road and now a new alleged construction of a Barat Ghar which has never existed nor was ever in their earlier submissions.

7. That despite the aforesaid judgments, Respondent No. 2 is acting against all cannons of justice in an illegal and contemptuous way trying to build up a fresh case by concealing material facts from this

NOTARY Reg No 33 7 BHIM SINGH INDORA DELHI GOVT OF INDIA

Hon'ble Tribunal just usurp the land in question to defeat the legitimate proprietary rights of the Respondent No. 1.

8. That, in para 6 of the Status Report dated 08.01.2024 Respondent No. 2 has placed reliance on the Judgment dated 06.03.2020 passed by the Hon'ble Supreme Court of India in **Indore Development Authority vs Manoharlal & Ors., SLP (C) No. 9036-9038 of 2016.** This submission was presented to and considered by the Hon'ble Supreme Court, who, after taking this into consideration, went on to dismiss the Review Petition and Misc Application filed by Respondent No.2 both **on merits** and limitation.

9. That in view of the aforesaid facts and circumstances explained above Respondent No. 2 is precluded from raising the issues that have attained finality again before this Hon'ble Tribunal and is **barred by principles of res judicata.**

10. That, Respondent No. 2 is behaving in the most callous manner and the once again advancing the arguments which were already considered while dismissing Writ Petition by Hon'ble High Court of Delhi and dismissal of SLP, Review Petition and a subsequent Misc Application by Hon'ble Supreme Court.

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11. The Respondent No. 1 craves leave of this Hon'ble Tribunal to file additional submissions/documents in case the need so arises.

DEPONENT

Verification: Verified at New Delhi on this the 6th day of February 2024 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

ATTESTED

BHIM SINGH
NOTARY

06 FEB 2024

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NOTARY
Reg No 337
BHIM SINGH
DELHI
GOVT OF INDIA

ANNEXURE 1 54

2015:DHC:1690-DB

$~14

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.02.2015

+ **W.P. (C) 6390/2014**

SATYA NARAIN PRAKASH PUNJ ... Petitioner

versus

UNION OF INDIA & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Anju Bhattacharya and Ms Elgin Matt John, Advocates.

For the Respondents :Mr Sanjay Kumar Pathak, Mr Sunil Kumar Jha and Mr Siddharth Panda, Advocates for L&B/LAC/GNCTD.
Mr Dhanesh Relan with Mr Arush Bhandari, Advocate for DDA.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J(ORAL)

1. Mr Siddharth Panda, the learned counsel appearing for respondent No.2 has handed over the affidavit on behalf of Land Acquisition Collector (South). The same is taken on record. The learned counsel for

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2015:DHC:1690-DB

the petitioner does not wish to file any rejoinder affidavit inasmuch as all the necessary averments are contained in the writ petition.

2. By way of this writ petition the petitioner seeks the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "2013 Act") which came into effect on 01.01.2014. The petitioner, consequently, seeks a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the "1894 Act") and in respect of which Award No. 90/1980-81 dated 22/29.12.1980 was made, *inter alia*, in respect of the petitioner's land, comprised in Khasra Nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) in all measuring 30 bighas 14 biswas, in village Masoodpur, shall be deemed to have lapsed.

3. In this case, it has been admitted by the concerned Land Acquisition Collector that physical possession of the subject land has not been taken. This is evident from the counter-affidavit filed on behalf of the concerned Land Acquisition Collector. It is, however, contended by the learned counsel for the respondents that the amount of compensation in respect of the same was deposited in the treasury, though the same has

not been paid to the land owner nor was it offered to the land owner.

4. The learned counsel for the respondents placed reliance on the second proviso to Section 24(2) of 2013 Act, which has been introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (hereinafter referred to as the "said Ordinance"). The newly added proviso reads as under:-

> "Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."
>
> (underlining added)

5. On a plain reading of the proviso, it is evident that its purpose is to compute the period of five years referred to in Section24(2) of the 2013 Act. Certain periods are to be excluded in computing the said period referred to in Section 24(2) of the 2013 Act. The periods to be excluded are:

(1) the period or periods during which the proceedings for acquisition of the land were held up on account of any

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by the learned counsel for the petitioner that unless and until possession is taken, the third alternative mentioned in the second proviso does not get triggered even though compensation may be lying deposited in a court or in any account maintained for such purposes.

8. In any event, the second proviso to Section 24(2) introduced by virtue of the said Ordinance has been held to be only prospective in operation by virtue of the Supreme Court decisions in ***M/s Radiance Fincap (P) & Ors. v. Union of India & Ors.*** decided on 12.1.2015 in **Civil Appeal No.4283/2011** and ***Karnail Kaur & Ors. Vs. State Of Punjab & Ors.*** decided on 22.1.2015 in **Civil Appeal no.7424 of 2013**. The rights vested in the petitioner as on 01.01.2014 by virtue of the 2013 Act have not been taken away by virtue of the introduction of the second proviso to Section 24(2) of the said Ordinance.

9. That being the position, the question of payment of compensation will have to be construed in the light of the various decisions rendered by the Supreme Court and this Court in:-

(i) ***Pune Municipal Corporation and Anr v.Harakchand Misirinal Solanki and Ors***: **(2014)3 SCC 183**;

(ii) ***Unionof IndiaandOrsv.ShivRajandOrs***: **(2014) 6**

stay or injunction issued by any court; or

(2) the period specified in the Award of a Tribunal for taking possession; or

(3) such period where possession has been taken but the compensation is lying deposited in a court or in any account maintained for this purpose.

6. The learned counsel for the respondents are relying on the third alternative inasmuch as it has been contended that the amount for compensation has been placed in the government treasury. According to the learned counsel for the respondents, this amounts to deposit "in any account maintained for this purpose". Consequently, it is urged that the entire period during which this amount was lying in the treasury ought to be excluded.

7. The learned counsel for the petitioner contends that the newly added proviso does not have any application to the facts prevailing in the present case. The question of compensation lying deposited in a court or in any account maintained for such purposes would only arise in a case where possession has been taken. In the present case, admittedly, the possession has not been taken. This being the situation, the newly inserted proviso has no application. We agree with the submission made

SCC 564;

(iii) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors.*: Civil Appeal No. 8700/2013** decided on 10.09.2014; and

(iv) ***Surender Singh v. Union of India and Ors.*: W.P.(C) 2294/2014** decided 12.09.2014 by this Court.

In ***Pune Municipal Corporation*** (*supra*) it has been held that unless and until the compensation was tendered to the persons interested, mere deposit of the compensation amount in a court would not amount to payment of compensation. This aspect has also been considered in ***Gyanender Singh & Others v. Union Of India & Others: WP (C) 1393/2014*** decided by a Division Bench of this Court on 23.09.2014. The same would be the position in respect of a deposit in "any account maintained for this purpose". Consequently, the mere deposit in the treasury, without being offered or tendered to the persons entitled would not ipso facto amount to payment of compensation.

10. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioner. The Award was made more than five years prior to the coming into force of the 2013 Act. No period is liable to be excluded inasmuch as the second proviso, which has been newly inserted by virtue of the said

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Ordinance, is not applicable, as indicated above.

11. As a result, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared.

12. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

FEBRUARY 23, 2015
n

ANNEXURE 2 61

(123)

DATE OF HEARING: 23.02.2015

IN THE HIGH COURT OF DELHIAT NEW DELHI

W.P.(C) 6390/2014

IN THE MATTER OF:

SATYA NARAIAN PRAKASH PUNI ..... PETITIONER

VERSUS

UNION OF INDIA & ORS. ..... RESPONDENTS

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NOTE: Advance copies of all the above pleadings/documents have been served on all the parties/counsel for the parties. There is One petitioner represented by one counsel and 3 respondents represented by two counsels.

New Delhi FILED BY

Date: 20.02. 2015

Pathak

(SANJAY KUMAR PATHAK)
ADVOCATE (E. NO. D/1125/1995)
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Mob No. 9910770311
clerk: 9716976102 (Deepak)

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6390/2014

IN THE MATTER OF:

SATYA NARAIAN PRAKASH PUNJ ..... PETITIONER

VERSUS

UNION OF INDIA & ORS. ..... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NOS. 1 AND 3.

I, Vivek Kumar Tripathi S/o Shri M.S. Chaudhary, aged about 43 years, presently working as Additional District Magistrate-cum-Land Acquisition Collector (New Delhi) at D.C. Office Complex, 12/1, Jam Nagar House, Shahjahan Road, New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am presently working in my official capacity with Govt. of NCT of Delhi and I have gone through the averments made in the writ petition under reply and also the records pertaining to the present case and have made myself conversant with the facts and circumstances of this case and I am competent and authorized to swear and file the present affidavit on behalf of the respondents Nos.1 and 3.

2. That the answering respondents are filing this short counter affidavit and are replying only to such contents of the petition as are relevant at this stage to controvert the primary averments made in the writ petition. However, the answering respondents crave leave of this Hon'ble Court to file detailed counter affidavit/additional affidavit /documents, if required or so directed at later stage by this Hon'ble Court.

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3. That the petitioner have filed this writ petition in respect of the land comprised in Khasra Nos., 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) total measuring 30 bigha 14 biswa situated in the revenue estate of village Masoodpur seeking a declaration that acquisition proceedings in respect of the said khasra Nos. vide notification dated 23.01.1965 issued under Section 4 of the Land Acquisition Act, 1894 (for short "the Old Act) and declaration dated 26.10.1968 issued under Section 6 of the of the Old Act and Award No. 90/1980-81 dated 22/29.12.1980 are deemed to have lapsed in view of the provisions of Section 24(2) of "the Right to Fair Compensation And Transparency in Land Acquisition Rehabilitation And Resettlement Act, 2013" (for short "the New Act") and for seeking consequential relief.

4. That at the outset, the answering respondents deny each and every averments made in the writ petition and nothing contained therein should be deemed to be admitted unless specifically admitted hereinafter.

5. That the petitioner has not come to this Hon'ble Court with clean hands and are guilty of suppressio vari suggestio falsi as the petitioner has not disclosed material facts before this Hon'ble Court and thus, the petitioners are not entitled to any relief much less any discretionary relief from this Hon'ble Court. As per the possession proceedings dated 29.12.1980, the possession of the land in question was not taken due to stay from this Hon'ble High Court. The said stay was granted in favour of the petitioner in an earlier writ petition being W.P. (C) No.1802/1980 which was filed by the petitioner challenging the present acquisition proceedings. The said writ petition was heard and disposed of along with the batch of writ petitions challenging various acquisition proceedings including the

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present one, lead case being Roshnara Begum Vs. UOI & Ors. reported in AIR 1996 Delhi 206. The challenge to acquisition, however, had failed and the said writ petitions were dismissed vide judgment and order dated 14.12.1995. The said judgment was taken into appeals before the Hon'ble Supreme Court which appeals were also dismissed vide judgment of the Hon'ble Supreme Court in Murari Vs.UOI reported in (1997)1 SCC 15. The compensation amount in respect of the subject land had, however, already been sent to the revenue deposit on 29.08.1981.

6. That the present writ petition under reply is liable to be dismissed on the ground of delay and latches. As the notification under section 4 of the Old Act was issued on 23.01.1965 which was followed by declaration under section 6 issued on 26.12.1966 and thereafter, Award No. 90/1980-81 was made on 22/29.12.1980. The petitioner has approached this Hon'ble Court after such a long lapse of time and that too after his challenge to acquisition proceedings having failed in the year 1995. Even otherwise, the writ petition is liable to be dismissed also for the reason that it raises disputed questions of facts which cannot be adjudicated upon in the present writ petition.

7. That the subject land comprised in Khasra Nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) total measuring 30 bigha 14 biswa situated in revenue estate of village Masoodpur New Delhi was notified vide notification dated 23.01.1965 issued under Section 4 of the Old Act which was followed by declaration issued under Section 6 issued on 26.10.1968 and Award No.90/1980-81 was also made on 29.12.1980 with respect to the acquired land including the subject land.

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8. That as regards status of possession and compensation, it is humbly submitted that, as stated above, the possession of the land in question was not taken due to stay form this Hon'ble High court in W.P.(C) No. 1802/1980 and the compensation amount was sent to revenue deposit on 29.03.1981.

9. That the petitioner has admitted that his aforesaid earlier writ petition was decided by this Hon'ble Court in terms of the detailed order dated 14-12-1995 passed in the case of Roshanara Begum Vs. UOI& Ors reported as AIR 1996 Delhi 206, whereby this Hon'ble Court had declined to quash the acquisition proceedings. It is further the case of the petitioner that in the writ petition bearing No.1280/1980, this Hon'ble Court gave liberty to the petitioner to make a representation to the Government Authorities for de-notification and thus, he claims to have made a representation.

10. That from the above submissions, it is evident that the possession of the land of the petitioners could not be taken in view of the stay order granted by this Hon'ble Court but compensation was sent to Revenue Deposit. It is humbly submitted that present case is covered by the maxim "Actus Curiae Neminem Gravabit" i.e. an act of the Court should prejudice no one". Even otherwise, in view of the newly added proviso to Section 24 (2) of the New Act by way of "the Right to Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement (Amendment) Ordinance, 2014" (for short "the Ordinance") the period of stay has to be excluded while calculating the period five years or more as contemplated under Section 24(2) of the New Act. The second proviso so added by the Ordinance after the proviso to Section 24(2) reads as follows:

> "Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court

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or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

11. That in view of the above, it is submitted that Section 24 (2) of the New Act is neither attracted nor can be applied in the facts of this case and thus, the present acquisition proceedings cannot be deemed to have lapsed qua the land of the petitioners.

12. That in view of the above, the present writ petition is liable to be dismissed with costs. The judgment relied upon by the petitioner is not applicable in the facts and circumstances of this case. It is humbly submitted that there can be no quarrel on legal propositions but judgments cannot be read as statutes and have to be seen in the context of facts and circumstances inwhichthe samewere delivered.

Prayers made in the writ petitions are misconceived false and wrong and are denied and are opposed to be granted. It is denied that the petitioner is entitled to any relief as claimed or otherwise. On the contrary, the writ petition under reply is liable to be dismissed with costs. It is prayed accordingly.

DEPONENT

VERIFICATION

Verified at New Delhi on this 20th day of February, 2015 that the contents of paras 1 to 12 of this affidavit are true and correct to my knowledge and belief based on available records and no part of it is false.

DEPONENT

I identify the deponent who has signed in my presence

20 FEB 2015

SANGEETA RANI
Oath Commissioner, Delhi
Delhi High Court, New Delhi

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C)6390/2014

IN THE MATTER OF:

SATYA NARAIAN PRAKASH PUNJ .... PETITIONER

VERSUS

UNION OF INDIA & ORS. .... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NOS. 1 AND 3TO THE APPLICATION FOR INTERIM RELIEF.

I, Vivek Kumar Tripathi S/o Shri M.S. Chaudhary, aged about 43 years, presently working as Additional District Magistrate-cum –Land Acquisition Collector (New Delhi) at D.C. Office Complex, 12/1, Jam Nagar House, Shahjahan Road, New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am presently working in my official capacity with Govt. of NCT of Delhi and I have gone through the averments made in the writ petition and the application under reply and also the records pertaining to the present case and have made myself conversant with the facts and circumstances of this case and I am competent and authorized to swear and file the present affidavit on behalf of the respondents Nos. 1 and 3.

2. That I am replying only to such contents of the application under reply as are relevant at this stage and I reserve my right to file detailed affidavit and produce relevant records at later stage, if necessary.

3. That the answering respondents have filed their accompanying counter affidavit contents whereof are not repeated herein for

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the sake of brevity and the same be read as part of the present para as part of this reply affidavit.

4. That at the outset, the answering respondents deny each and every averments made in the application under reply and nothing contained therein should be deemed to be admitted unless specifically admitted hereinafter.

5. That the petitioners have not come to this Hon'ble Court with clean hands and are guilty of suppressio vari suggestio falsi as the petitioners have not disclosed material facts before this Hon'ble Court and thus, the petitioners are not entitled to any relief much less any discretionary relief from this Hon'ble Court. The present writ petition under reply is liable to be dismissed on the ground of delay and latches. Even otherwise the writ petition is liable to be dismissed also for the reason that it raises disputed questions of facts which cannot be adjudicated upon in the present writ petition. Averments made in the counter affidavit maybe read as part of this para.

6. That the petitioners have no case much less any prima facie case in their favour. The balance of convenience is also not in favour of the petitioners as alleged or otherwise. It is denied that the petitioners will suffer irreparable loss or injury as alleged or otherwise.

7. That it is denied that the application under reply has been filed bonafide as alleged or otherwise.

8. That in view of the above, the present writ petition as also the application under reply is liable to be dismissed with costs.

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Prayers made in the application under reply are misconceived, false and wrong and are denied and are opposed to be granted. It is denied that the petitioners are entitled to any relief as claimed or otherwise. On the contrary, the application under reply is liable to be dismissed with costs. It is prayed accordingly.

DEPONENT

VERIFICATION:

Verified at New Delhi on this the 20 FEB 2015 day of February, 2015 that the contents of para 1 to 8 of the above affidavit are true and correct to my knowledge and belief based on records and no part of it is false.

20 FEB-2015

DEPONENT

I identify the deponent who has signed in my presence

Advocate

Dt/o M. S. Chauhan

Solemnly affirmed before me at Delhi

as Sl. No. 2

that the contents of the affidavit which have been read & explained to him are true & correct to his knowledge

SANGEETA RANI
Oath Commissioner, Delhi
Delhi High Court, New Delhi

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ANNEXURE 3

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Office

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No._____of 2015

[ORDER XXI RULE 3(1)(a) OF SUPREME COURT RULES, 2013]

[Against the impugned final order dated 23.2.2015 passed by the High Court of Delhi at New-Delhi in W.P (C) No.6390/2014]

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

DELHI DEVELOPMENT AUTHORITY ..... PETITIONER

VERSUS

SATYA NARAIN PRAKASH PUNJ & ORS. ... RESPONDENTS,

WITH

I.A No._____of 2015
An application for condonation of delay in filing
Special leave petition

WITH

I.A No._____of 2015
An application for exemption from filing certified copy
of impugned order

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

ADVOCATE ON RECORD FOR PETITIONER: SHANTANU SAGAR

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10.	ANNEXURE P/3 A true typed copy of Award bearing No. 90/80-81 dated 29.12.1980	83-88
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No._____of 2015

[Under Order XXI Rule 3(i) (a) of Supreme Court Rules 2013]

IN THE MATTER OF:

POSITION OF PARTIES

	In High Court	In this Court
Delhi Development Authority Through its Vice Chairman INA Vikas Sadan, New Delhi	Respondent No.2	Petitioner

VERSUS

1. Sh. Satya Narain Prakash Punj
S/o Late Sh. Pt. Kanahya Lal Punj
R/o 10, Prithvi Raj Road,
New Delhi - 110011
Through His Attorney Holder
Sh. Uday Punj,
S/o Sh. Satya Narain Prakash Punj
R/o 55, Sultanpur Farms,
New Delhi - 110030
Petitioner Cont. Resp.No.1

2. Union of India,
Through, Land Acquisition Collector
Tis Hazari Courts, Delhi -110054
Respondent No.2 Cont. Resp.No.2

3. Delhi Administration,
Through its Secretary,
Land & Building Department,
Vikas Bhawan, I.P. Estate.
New Delhi -110002
Respondent No.3 Cont. Resp.No.3

A PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

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To

The Hon'ble Chief Justice of India and His Companion Judges of the Supreme Court of India

The Humble Petition on behalf of the Petitioner above named

MOST RESPECTFULLY SHEWETH:

1. The instant special leave petition is directed against the final order dated 23.2.2015 passed by the High Court of Delhi at New-Delhi in W.P (C) No.6390/2014 whereby the Hon'ble Division Bench allowed the writ petition filed by Respondent No.1 and declared that the acquisition proceedings in respect of which in respect of which Award No. 90/1980-81 dated 22/29.12.1980 was made, inter alia, in respect of the petitioners land, comprised in Khasra Nos. 480/396/87 (3-12), 479/396.87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) in all measuring 30 bighas 14 biswas, in village Masoodpur, New Delhi are deemed to have lapsed.

2. QUESTIONS OF LAW:

The following questions of law arise for kind consideration by this Hon'ble Court,

i. Whether the Hon'ble High Court erred in ignoring the proviso to Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, wherein the Writ Petitioners were entitled to compensation under the 2013 Act?

ii. Whether the Hon'ble High Court erred in reading Section 24(2) of 2013 Act in isolation of the proviso?

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iii. Whether the Hon'ble High Court was correct in declaring the acquisition proceedings as being lapsed, whereas the same had already attained finality?

iv. Whether the Hon'ble High Cout erred in deciding the matter at the stage of admission wherein rival submissions on disputed question of facts were involved?

v. Whether the Hon'ble High Court erred in exciting it extra ordinary discretionary jurisdiction and thereby negating the land acquisition proceedings which had already attained finality?

vi. Whether the Hon'ble High Court erroneously declared the acquisition proceedings as being lapsed in view of the fact that earlier writ petition challenging the same land acquisition proceedings was dismissed by the High Court vide a detailed judgment, thus the second writ petition with regard to the same subject matter was barred?

3. DECLARATIONIN TERMS OFRULE 3(2):-

That the Petitioners have not filed any other petition seeking special leave to appeal against the final judgment and order dated 23.2.2015 passed by the High Court of Delhi at New-Delhi in W.P (C) No.6390/2014 before this Court or any other court claiming the said same relief.

4. DECLARATION IN TERMS OFRULE 5:-

That the Annexures P-1 to P- produced alongwith the special leave petition are true typed as well as translated copies of the pleadings/documents, which formed part of the records of the case, in the court below against which order the Special Leave to Appeal is sought for in this petition.

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5. GROUNDS:-

The instant Special Leave Petition rests inter-alia on the following grounds namely,

A. For that the Hon'ble High Court erred in ignoring the proviso to Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, wherein the Writ Petitioners were entitled to compensation under the 2013 Act.

B. For that the Hon'ble High Court erred in reading Section 24(2) of 2013 Act in isolation of the proviso and seriously erred in declaring the acquisition proceedings as being lapsed, whereas the same had already attained finality.

C. For that the Hon'ble High Court erred in deciding the matter at the stage of admission wherein rival submissions on disputed question of facts were involved and thus exercising its extra ordinary discretionary jurisdiction and thereby negating the land acquisition proceedings which had already attained finality.

D. For that the Hon'ble High Court erroneously declared the acquisition proceedings as being lapsed in view of the fact that earlier writ petition challenging the same land acquisition proceedings was dismissed by the High Court vide a detailed judgment, thus the second writ petition with regard to the same subject matter was barred.

E. For that the Hon'ble High Court should have appreciated that writ-petitioner had not approached the High Court with clean hands and had failed to give correct/material details with respect to his land.

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F. For that the Hon'ble High Court should have appreciated that the respondent No.1 had got absolutely no locus standi to file the writ petition, which was devoid of any merits, basis, justification or cause of action.

G. For that the Hon'ble High Court should have appreciated that the 2013 Act had got absolutely no application or relevance to the facts of the present case. However, the present matter is squarely covered under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 being Ordinance No. 9 of 2014 dated December 31, 2014 as passed by the Legislature, which gives a specific protection so that malafide petitions such as the present petition do not take unjust benefit of the Principal Act and the ambit and object of acquisition for planned development of Delhi does not suffer.

H. For that the Hon'ble High Court should have appreciated that the period spent in litigation or where the possession could not be taken due to any orders of the court, the said period cannot be excluded for computing the period of 5 years for the purposes of Section 24 of the Act of 2013 as maliciously fabricated without an iota of truth; more particularly in view of the express provisions as contained in the Ordinance that in the Principal Act, in Section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award

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of a Tribunal for taking possession or such periods whe erpo ssessio. has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded".

I. For that the Hon'ble High Court should have appreciated that in the present case the amount of compensation in respect of the acquisition was deposited in the treasury and thus it amounted to deposit "in any account maintained for this purpose", thus the entire period during which the amount was lying in the treasury ought to have been excluded.

J. Because even otherwise the order of the High Court is bad in law and liable to be set aside by this Hon'ble Court.

K. For that the petitioner craves the leave of this Hon'ble Court to raise such other/further grounds, including the pleadings before the High Court, at the time of arguments which could not otherwise be taken in the present special leave petition.

6. GROUNDS FOR INTERIM RELIEF:-

i. For that as a consequence to the impugned order passed by the Hon'ble High Court the already acquired lands involved in this special leave petition are deemed to have been released on account of the land acquisition proceedings having lapsed; and/or

ii. Because the petitioner has a prima facie strong case on merits and the balance of convenience lies in its favour, hence would suffer irreparable loss and injuries if the impugned order of the High Court is not stayed.

7. MAIN PRAYER:-

It is therefore most respectfully prayed that Your Lordships may graciously be pleased to:-

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i. Grant Special Leave to Appeal to the petitioner against the final order dated 23.2.2015 passed by the High Court of Delhi at New-Delhi in W.P (C) No.6390/2014; and/or

ii. Pass such other or further order/(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

8. PRAYER FOR INTERIM RELIEF:-

i. Pass an ad-interim ex-parte order staying the operation abd effect of the final order dated 23.2.2015 passed by the High Court of Delhi at New-Delhi in W.P (C) No.6390/2014; and/or

ii. Pass such other or further order/(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

DRAWN & FILED BY:

[SHANTANU SAGAR]
Advocate on Record for the Petitioner

Drawn On: 14.7.2015
Filed On: ..2015

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No._____of 2015

IN THE MATTER OF:

Delhi Development Authority ....PETITIONER

VERSUS

Satya Narain Prakash Punj & Ors. ...RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the High Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds which were not part of the records before the Courts below, have been pleaded herein. Further certified that the copies of the documents/annexures attached to the Special Leave Petition for consideration of this Hon'ble Court were the documents/annexure in the Courts below. The Certificate is given by the counsel for the petitioner on instructions of the petitioner whose affidavit is filed in support of the Special Leave Petition.

[SHANTANU SAGAR]

Advocate on Record for the Petitioner

New-Delhi

Dated: .2015

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No._____of 2015

IN THE MATTER OF:

Delhi Development Authority ..PETITIONER

VERSUS

Satya Narain Prakash Punj & Ors. ..RESPONDENTS

AFFIDAVIT

I, B.K.Mishra, aged about 47 years, Commissioner Land Management, DDA, Vikas Sadan, New Delhi, the caponent above named do hereby solemnly affirm and declare as under:

1. That I am acquainted wth the facts of the case as per information's derived from record and am duly authorized and competent to depose on behalf of the petitioner.

2. That I have read over and understood the accompanying Special Leave Petition (paras 1 to 8) (Pages 6 to 15) and the list of Dates pages (B to G), and the Interlocutory Applications & having understood the contents thereof, I say that the facts stated therein are true and correct to the best of my knowledge.

3. That the Annexures are true typed as well as translated copies of their respective originals.

4. That the instant Special leave petition paper-book contains total pages[110].

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5. That the facts stated in the above affidavit are true and correct to the best of my knowledge. No part of the same is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

I the above named deponent do hereby verify that the facts stated in the above affidavit are true to the best of my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 29th day of October, 2015

DEPONENT

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ANNEXURE 4

Certified to be true copy

Assistant Registrar (Judl.)
SECTION OFFICER
SUPREME COURT OF INDIA

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4544 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 11996 OF 2015]

DELHI DEVELOPMENT AUTHORITY Appellant(s)

VERSUS

REENA SURI AND ORS. Respondent(s)

WITH

CIVIL APPEAL NO. 4545 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 12032 OF 2015]

CIVIL APPEAL NO. 4546 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 12433 OF 2015]

CIVIL APPEAL NO. 4547 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 12606 OF 2015]

CIVIL APPEAL NO. 4548 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 13377 OF 2015]

CIVIL APPEAL NO. 4549 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 13378 OF 2015]

CIVIL APPEAL NO. 4550 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 14103 OF 2015]

CIVIL APPEAL NO. 4552 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 15350 OF 2015]

CIVIL APPEAL NO. 4553 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 17590 OF 2015]

CIVIL APPEAL NO. 4554 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 17601 OF 2015]

CIVIL APPEAL NO. 4555 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 17603 OF 2015]

CIVIL APPEAL NO. 4556 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 17605 OF 2015]

CIVIL APPEAL NO. 4557 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 17607 OF 2015]

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CIVIL APPEAL NO. 4558 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 21351 OF 2015]

CIVIL APPEAL NO. 4559 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 22068 OF 2015]

CIVIL APPEAL NO. 4560 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25402 OF 2015]

CIVIL APPEAL NO. 4561 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25405 OF 2015]

CIVIL APPEAL NO. 4562 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25407 OF 2015]

CIVIL APPEAL NO. 4563 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25411 OF 2015]

CIVIL APPEAL NO. 4564 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25415 OF 2015]

CIVIL APPEAL NO. 4565 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 25418 OF 2015]

CIVIL APPEAL NO. 4566 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 26665 OF 2015]

CIVIL APPEAL NO. 4567 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 26721 OF 2015]

CIVIL APPEAL NO. 4568 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 26722 OF 2015]

CIVIL APPEAL NO. 4569 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 27397 OF 2015]

CIVIL APPEAL NO. 4570 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 28866 OF 2015]

CIVIL APPEAL NO. 4571 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30126 OF 2015]

CIVIL APPEAL NO. 4572 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30132 OF 2015]

CIVIL APPEAL NO. 4573 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30133 OF 2015]

CIVIL APPEAL NO. 4574 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30136 OF 2015]

CIVIL APPEAL NO. 4575 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30139 OF 2015]

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CIVIL APPEAL NO. 4576 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30140 OF 2015]

CIVIL APPEAL NO. 4577 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30143 OF 2015]

CIVIL APPEAL NO. 4578 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30144 OF 2015]

CIVIL APPEAL NO. 4579 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30145 OF 2015]

CIVIL APPEAL NO. 4580 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30147 OF 2015]

CIVIL APPEAL NO. 4581 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30150 OF 2015]

CIVIL APPEAL NO. 4582 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30210 OF 2015]

CIVIL APPEAL NO. 4583 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30245 OF 2015]

CIVIL APPEAL NO. 4584 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 30726 OF 2015]

CIVIL APPEAL NO. 4585 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 31249 OF 2015]

CIVIL APPEAL NO. 4586 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 31668 OF 2015]

CIVIL APPEAL NO. 4587 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 31671 OF 2015]

CIVIL APPEAL NO. 4588 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 31679 OF 2015]

CIVIL APPEAL NO. 4589 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 32634 OF 2015]

CIVIL APPEAL NO. 4590 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 32635 OF 2015]

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[@ SPECIAL LEAVE PETITION (C) NO. 33654 OF 2015]

CIVIL APPEAL NO. 4592 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 2540 OF 2016]

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CIVIL APPEAL NO. 4593 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 4223 OF 2016]

CIVIL APPEAL NO. 4594 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 6359 OF 2016]

CIVIL APPEAL NO. 4595 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 6363 OF 2016]

CIVIL APPEAL NO. 4596 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 7012 OF 2016]

CIVIL APPEAL NO. 4597 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 10155 OF 2016]

CIVIL APPEAL NO. 4598 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 10156 OF 2016]

CIVIL APPEAL NO. 4599 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 10166 OF 2016]

CIVIL APPEAL NO. 4600 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 10187 OF 2016]

CIVIL APPEAL NO. 4601 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 11964 OF 2016]

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. All these appeals have been filed by the Delhi Development Authority, aggrieved by the Judgment of the High Court of Delhi. In the impugned Judgment, the High Court has taken the stand that the land acquisition initiated under the Land Acquisition Act, 1894, and culminating in passing of awards on different dates, has lapsed in view of Section 24 of The Right to Fair Compensation and Transparency in

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(284)

Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "2013 Act") in respect of the land covered by these appeals. Section 24 of the Act reads as follows :-

> "24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--
>
> (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
>
> (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
>
> (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an

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award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act"

3. It may be seen that under Section 24(2) of the Act, the proceedings initiated under the Land Acquisition Act, 1894 and culminating in award under Section 11 of the said Act would lapse in case the possession after passing of the award has not been

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(286)

taken within five years or more prior to the commencement of the 2013 Act (9 of 2014). This Act came into force on 01.01.2014. Under Section 24 (2) of the 2013 Act, the proceedings would also lapse in case the compensation has not been paid to the owners of the land before 01.01.2014. However, it is made clear under Section 24(2) of the 2013 Act that despite such lapse, it will be open to the appropriate Government to initiate fresh proceedings for acquisition in accordance with the provisions of the 2013 Act.

4. Sh. Vishnu Saharya, learned counsel appearing for the appellant-Delhi Development Authority, has submitted that once an award has been passed, the property vests in the Government and, therefore, there is no lapse. We are afraid, the contentions raised by him cannot be appreciated.

5. Section 16 of the Land Acquisition Act, 1894 reads as follows :-

> *"Power to take possession - When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances."*

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(287)

6. Under the above provision, once an award has been made by the Collector under Section 11 of the Act, 1894, the Collector has to take possession of the land and only thereupon, the land will vest in the Government free from all encumbrances. Therefore, passing of the award by itself will not enable the appellant to take a contention that the land has automatically vested with the Government on passing of the award.

7. It is not in dispute that in all these cases, the land has not been taken possession of by the Collector within five years or more prior to 01.01.2014 when the 2013 Act came into force.

8. In that view of the matter, there is no merit in these appeals. The appeals are, accordingly, dismissed.

No costs.

.....Sd/-.....J.
[KURIAN JOSEPH]

.....Sd/-.....J.
[ROHINTON FALI NARIMAN]

New Delhi;
April 28, 2016

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A1-No 17140
Urgent Fee Rs 5/-
Construction Fee Rs 10/-
No. of folio 8 Rs 8
Total Cost Rs 23
(a) Application filed on :- 26/05/2016
(b) the date given to receive copy :- 26
(c) date on which copy is made ready :- 28
(d) the date on which the copy is received by the applicant or sent to the applicant :-

Branch Officer
Supreme Court of India

SEALED IN MY PRESENCE

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ANNEXURE 5

CA 12113/2016

FILED ON 01 APR 2015 SUPREME COURT

IN THE SUPREME COURT OF INDIA
[ORDER XXI RULE 3(1)(A)]
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C)No. 36658 OF2015

(Against the Impugned Judgment & Final Order dated 23.02.2015 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (C) No. 6390 of 2014)

(WITH PRAYER FOR INTERIM RELIEF)

		Position of the Parties In the High Court	In this Court
IN THE MATTER OF:-			
1.	Delhi Administration through its Secretary, Land& Building Department, Vikas Bhawan, I.P. Estate, New Delhi – 110 002	Respondent No.3	Petitioner No. 1
2.	Union of India through Land Acquisition Collector, Tis Hazari Court, Delhi – 110 054	Respondent No. 1	Petitioner No. 2
VERSUS			
1.	Sh. Satya Narain Prakash Punj, S/o Late Sh. Pt. Kanahya Lal Punj, R/o 10, Prithvi Raj Road, New Delhi – 110 011 Through his Duly constituted Power of Attorney Holder Mr. Uday Punj, S/o Sh. Satya Narain Prakash Punj, R/o 55, Sultanpur Farms, New Delhi – 110 030	Petitioner No. 1	Contesting Respondent No. 1

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CA 12113/2016 (7) 33 (70)

2.	Delhi Development Authority, through its Vice Chairman, Vikas Sadan, INA, New Delhi	Respondent No. 9	Proforma Respondent No. 2

To,

The Hon'ble Chief Justice and his Companion Justices of the Hon'ble Supreme Court of India

The Humble Petition of the Petitioners abovenamed

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing the present Special Leave Petition to challenge the Judgment & Final Order dated 23.02.2015 passed in Writ Petition (C) No. 6390 of 2014 by the Hon'ble High Court of Delhi at New Delhi whereby the Hon'ble Court in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Res ettlemen Act (hereinafte r referred to as the 'New Act'), relying upon the decisions of this Hon'ble Court in Pune Municipal Corporation & Anr. Vs. Harak Chand Mistrimal Solanki [2014 (3) SCC 183], Sree Balaji Nagar Residential Association vs State of Tamil Nadu & Ors [2014 (10) SCALE 388] and Union of India & Ors vs Shiv Raj & Ors [(2014) 6 SCC 564], and on the decisions of the Hon'ble High Court in Surender Singh vs Union of India & Ors [W.P. (C) No. 2294/2014] and in Gyanender Singh vs Union of India & Ors [W.P. (C) No. 1393/2014], allowed the Petition and held that the acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Old Act') in respect of land bearing Khasra Nos. 480/396/87, 479/396/87, 86, 88 and 67 measuring 30 Bighas 14 Biswas situated in Village Masoodpur, Delhi belonging to the Petitioners shall be deemed to have lapsed. The Hon'ble

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CA 12113/2016 (71) 8 34 (71)

Court was of the view that since the Award was made on 22.12.1980, which is more than five years prior to the commencement of the New Act, and neither physical possession of the land has been taken nor compensation has been paid to the Petitioner, the acquisition proceedings would lapse by virtue of Section 24 (2) of the New Act.

1A. That it is submitted that no Letters Patent Appeal or Writ Appeal lies against the impugned Judgment.

2. QUESTIONS OF LAW:

The Petitioners are filing the present Special Leave Petition under Article 136 of the Constitution of India raising the following substantial question of law, inter-alia, that:-

I. Whether the Hon'ble High Court did not consider that Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is prospective in operation by virtue of Section 24 read with Section 114 of the New Act. As provided under Section 24, the effect of Section 6 of the General Clauses Act, 1897 has been protected. By reading these two Sections, it is clear that Legislature wanted to protect and save the acquisition proceedings initiated under the Land Acquisition Act, 1894?

II. Whether the Hon'ble High Court did not consider that a perusal of Section 24(2) reveals that it is in two parts. The first part relates to a positive state of affairs namely the existence of award for more than five years on the commencement of the New Act, whereas, the second part lays down two negative conditions. Thus, the word 'or' has been used to express an alternative of the terms/conditions. Therefore, if either of the two negative conditions which are found to be mentioned in Section

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24(2). remains unfulfilled, the acquisition proceedings cannot be held to have lapsed. In other words, the two negative conditions in Section 24(2) has to be read conjunctively and as such both the conditions are required to be fulfilled for the release of the land. This aspect has been dealt by this Hon'ble Court in 1971(2) SCC 540 titled as The Punjab Produce and Trading Co. Ltd.v. C.I.T, West Bengal, Calcutta?

III. Whether the Hon'ble High Court did not consider that the intent and object of the new Legislation does not appear to render all acquisition pending in various Courts of law to have lapsed, otherwise the enactment would have provide something or the other in respect of pending litigation qua acquisition of various land?

IV. Whether the Hon'ble High Court did not consider that the only reason because of which the department could not take possession of the subject land was due to interim stay granted by the Hon'ble High Court of Delhi firstly in respect of the land of the Respondent and then thereafter because of the operation of the stay order in in respect of a large number of landowners whose lands were sought to be acquired under the same acquisition and who had challenged the acquisition proceedings in the Hon'ble High Court and this Hon'ble Court. The interim order in respect of the same acquisition was in operation when the New Act came into effect. The department, under no circumstances, could have taken the possession of the land.

V. Whether the Hon'ble High Court did not consider that it has been consistently held by this Hon'ble Court that the scope of stay order granted in one case of landowners is automatically extended to all those

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(IP) 36

landowners, whose lands are covered under the notifications issued under Section 4 of the Land Acquisition Act, 1894 and that the interim order of stay granted in one of the matters of the landowners would put complete restraint on the authorities to proceed further with the acquisition proceedings. [Om Parkash v Union of India [(2010) 4 SCC 17, Abhey Ram v Union of India (1997) 5 SCC 421]?

VI. Whether the Hon'ble High Court has completely ignored the issue involved in the present case in as much as the issue about the legislative intent in matters where the possession of the land could not be taken due to stay order passed by the Courts in challenge to acquisition has to be seen and interpreted by the court in order to give harmonious effect to the clauses of Section 24 (2) of the new Act. This aspect of the matter is yet to be conclusively interpreted and adjudicated by either any High Court or this Hon'ble Court and only ancillary questions in respect of the interpretation of the Section have been answered?

VII. Whether the Hon'ble High Court did not consider that the intent of the Legislature to have acquisition deemed to have lapsed is certainly in respect of those acquisitions where the authorities despite no restraining order have adopted a lethargic approach in completing the acquisition proceedings, which necessarily shows that the land notified for acquisition is actually not required and thus such acquisition alone would be deemed to have lapsed?

3. DECLARATION IN TERMS OF RULE 3(2):

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Petitioner states that no other petition seeking leave to Appeal has been filed by him against the Impugned Judgment & Final Order dated 23.02.2015 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (C) No. 6390 of 2014.

4. DECLARATION IN TERMS OF RULE 5:

Certified that the Annexures P-1 to P-2 produced along with the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of he case in the Court below against whose orders leave to appeal is sought for in this petition.

5. GROUNDS:

Leave to Appeal is sought for on the following grounds:-

A. Because the Hon'ble High Court did not consider that Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is prospective in operation by virtue of Section 24 read with Section 114 of the New Act. As provided under Section 24, the effect of Section 6 of the General Clauses Act, 1897 has been protected. By reading these two Sections, it is clear that Legislature wanted to protect and save the acquisition proceedings initiated under the Land Acquisition Act, 1894.

B. Because the Hon'ble High Court did not consider that a perusal of Section 24(2) reveals that it is in two parts. The first part relates to a positive state of affairs namely the existence of award for more than five years on the commencement of the New Act, whereas, the second part lays down two negative conditions. Thus, the word 'or' has been used to express an alternative of the

terms/conditions. Therefore, if either of the two negative conditions which are found to be mentioned in Section 24(2) remains unfulfilled, the acquisition proceedings cannot be held to have lapsed. In other words, the two negative conditions in Section 24(2) has to be read conjunctively and as such both the conditions are required to be fulfilled for the release of the land. This aspect has been dealt by this Hon'ble Court in 1971(2) SCC 540 titled as The Punjab Produce and Trading Co. Ltd. v. C.I.T, West Bengal, Calcutta.

C. Because the Hon'ble High Court did not consider that the only reason because of which the department could not take possession of the subject land was due to interim stay granted by the Hon'ble High Court of Delhi firstly in respect of the land of the Respondent and then thereafter because of the operation of the stay order in in respect of a large number of landowners whose lands were sought to be acquired under the same acquisition and who had challenged the acquisition proceedings in the Hon'ble High Court and this Hon'ble Court. The interim order in respect of the same acquisition was in operation when the New Act came into effect. The department, under no circumstances, could have taken the possession of the land.

D. Because the Hon'ble High Court did not consider that it has been consistently held by this Hon'ble Court that the scope of stay order granted in one case of landowners is automatically extended to all those landowners, whose lands are covered under the notifications issued under Section 4 of the Land Acquisition Act, 1894 and that the interim order of stay granted in one of the matters of the landowners would put complete restraint on the authorities

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(12) 39

to proceed further with the acquisition proceedings. [Om Parkash v Union of India [(2010) 4 SCC 17, Abhey Ram v Union of India (1997)5 SCC 421]

E. Because the Hon'ble High Court has completely ignored the issue involved in the present case in as much as the issue about the legislative intent in matters where the possession of the land could not be taken due to stay order passed by the Courts in challenge to acquisition has to be seen and interpreted by the court in order to give harmonious effect to the clauses of Section 24 (2) of the new Act. This aspect of the matter is yet to be conclusively interpreted and adjudicated by either any High Court or this Hon'ble Court and only ancillary questions in respect of the interpretation of the Section have been answered.

F. Because the Hon'ble High Court did not consider that the intent and object of the new Legislation does not appear to render all acquisition pending in various Courts of law to have lapsed, otherwise the enactment would have provided something or the other in respect of pending litigation qua acquisition of various land.

G. Because the Hon'ble High Court did not consider that the intent of the Legislature to have acquisition deemed to have lapsed is certainly in respect of those acquisitions where the authorities despite no restraining order have adopted a lethargic approach in completing the acquisition proceedings, which necessarily shows that the land notified for acquisition is actually not required and thus such acquisition alone would be deemed to have lapsed.

H. Because in catena of Judgments this Hon'ble Court has held that the ratio of the Judgment should be applied only after visualizing that the facts of the case are identical to the case. A sentence from the Judgment cannot be lifted

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(14) 40

only to suit once own convenience. The ratio is to be understood in the facts of the case under which it has been rendered.

I. Because the Hon'ble High Court ignored the well-settled position of law as laid down by this Hon'ble Court in a catena of cases including Pandit Leela Ram v Union of India [AIR 1975 SC 2112], U.P. Jal Nigam v. M/s. Kalra Properties Pvt. Ltd. [AIR 1996 SC 1170], Meera Sahni v. Lieutenant Governor of Delhi & Ors. [(2008) 9 SCC 177] and V. Chandrasekaran v The Administrative Officer & Ors [(2012) 12 SCC 133], that the subsequent purchasers, who purchase the land after the issuance of the Section 4 Notification under the Old Act in respect of the land. could not raise any challenge to the acquisition proceedings, which were accepted by the original owners without any protest, on any grounds whatsoever.

J. Because this Hon'ble Court in the case of Southern Eastern Coal Field Ltd. Vs. State of Madhya Pradesh 2003(8) SCC 648 has elaborated the scope and applicability of the Maxim "Actus Curiae Neminem Gravabit" that all acts which the Court would not have done if correctly applied of the facts and the law.

K. Because in Amarjeet Singh Vs. Devi Ratan 2010(1) SCC 417 this Hon'ble Court elaborated the Maxim "Actus Curiae Neminem Gravabit" has held that no litigant can derive any benefit from mere pendency of a case in a Court of law, as interim order, always merges with the final order. The fact that Writ Petition is found, ultimately devoid of any merit, shows that a frivolous Writ Petition had been filed. The Maxim "Actus Curiae Neminem Gravabit", which means that act of Court shall prejudice no one, becomes applicable in such a case. In such a situation the Court is

under obligation to undo the wrong done to a party by the act of Court. Any undeserved or unfair advantage gained by a party invoking jurisdiction of the Court may be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suit or from delayed action by the act of Court.

6. GROUNDS FOR INTERIM RELIEF:

(i) For the purpose of interim relief, the petitioners crave leave of this Hon'ble Court to refer to and rely upon the grounds taken in the paragraph 5 above.

(ii) It is most respectfully submitted that the petitioners believe that the petitioners have strong chances of securing relief from this Hon'ble Court. It would sub serve the interest of justice if the interim relief is granted in favour of the Petitioners or otherwise irreparable loss and prejudice would be caused to the Petitioners. The balance of convenience is in favour of the Petitioners. Therefore, the operation of the interim order passed by the Hon'ble High Court may kindly be stayed, during the pendency of the present petition.

7. MAIN PRAYER:

It is therefore most respectfully prayed that Your Lordships may be pleased to:-

a) Grant Special Leave to Appeal against the Impugned Judgment & Final Order dated 23.02.2015 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (C) No. 6390 of 2014;

b) Pass such further and other order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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(16) 42

8. PRAYER FOR INTERIM RELIEF:

a) Stay the operation of the Impugned Judgment & Final Order dated 23.02.2015 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (C) No. 6390 of 2014;

b) Pass such further and other order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

FOR THIS ACT OF KINDNESS, THE PETITIONERS, AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:-

Rachana

(RACHANA SRIVASTAVA)
Advocate for the Petitioners

Drawn on: 24/12/15
Filed on: 1/4/16

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(17) 43

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

FILED ON
04 APR 2016
SUPREME COURT OF INDIA

SPECIAL LEAVE PETITION (C) No. OF 2016

IN THE MATTER OF:

Delhi Administration through Secretary
Land & Building Department & Anr. ... Petitioners

VERSUS

Sh. Satya Narain Prakash Punj Ors. ... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the documents relied in those pleadings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/Annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition is to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioners/petition authorized by the Petitioners whose affidavit is filed in support of the Special Leave Petition.

Rachana

1/4/16

(RACHANA SRIVASTAVA)
Advocate for the Petitioners

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION (18)

SPECIAL LEAVE PETITION (C) No. OF 2015

IN THE MATTER OF:-

Delhi Administration through Secretary
Land & Building Department & Anr. ... Petitioners

VERSUS

Sh. Satya Narain Prakash Punj Ors. ... Respondents

AFFIDAVIT

I, Pawan Pravesh, S/o Sh. Nanak Chand, aged 57 years, working as Dy. Secretary (LA), Land & Building Department, Govt. of Delhi, Vikas Bhawan, New Delhi, do hereby solemnly affirm and state on oath as under:-

1. That I am posted on the above-mentioned post and I am conversant with the facts of the case on the basis of knowledge derived from the records maintained in my Department. I am the duly authorized officer and as such am competent to swear this Affidavit.

2. That I have gone through the contents of Special Leave Petition its Paras from 1 to 8 (pages of SLP consist of 3 to) and the List of Dates, pages 2 to 12 and IA's and have understood the contents thereof which I believe to be true and correct on the basis of my knowledge derived from the record and belief.

3. That the Annexures are the true copies of their respective originals.

DEPONENT

VERIFICATION:

Verified at New Delhi on this day of January, 2016 that the contents of the above para are true and correct to the best of my knowledge and belief and on the basis of knowledge derived from the record maintained in my Department, no part of it is false and nothing material has been concealed therefrom.

DEPONENT

FILED ON 01 APR 2016 SUPREME COURT OF INDIA

NOTARY Rajendra Kumar Delhi Regd. No. 5780 GOVT. OF INDIA

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS PERFECTLY UNDERSTAND & ADMITTED BEFORE ME AT DELHI

IDENTIFY THE EXECUTANT/DEPONENT WHO SIGNED IN MY PRESENCE

ATTESTED
RAJENDRA KUMAR
NOTARY, DELHI, 5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI

31.01.2016

ANNEXURE 6 9 41-3/105

NON-REPORTABLE

NR-606/16

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12076 OF 2016

[ARISING FROM SPECIAL LEAVE PETITION (C) NO.36628 OF 2016]

[ARISING FROM SPECIAL LEAVE PETITION (C).....CC. NO. 3293 OF 2016]

GOVT. OF NCT OF DELHI THROUGH SECRETARY,
LAND AND BUILDING DEPARTMENT APPELLANT (S)

VERSUS

GOVIND RAM & ANR. RESPONDENT (S)

WITH

C.A. NO.12078/2016 @ SLP(C) NO.36630/2016 @ CC NO.3303/2016
C.A. NO.12079/2016 @ SLP (C) NO.36634/2016 @ CC NO.3305/2016
C.A. NO.12081/2016 @ SLP (C) NO.36635/2016 @ CC NO.3309/2016
C.A. NO.12084/2016 @ SLP (C) NO.36639/2016 @ CC NO.3455/2016
C.A. NO.12090/2016 @ SLP(C) NO.36642/2016 @ CC NO.3546/2016
C.A. NO.12097/2016 @ SLP (C) NO.36645/2016 @ CC NO.3612/2016
C.A NO.12102/2016 @ SLP(C) NO.36647/2016 @ CC NO.3628/2016
C.A. NO.12105/2016 @ SLP(C) NO.36650/2016 @ CC NO.3631/2016
C.A. NO.12112/2016 @ SLP (C) NO.36652/2016 @ CC NO.4195/2016
C.A. NO.12115/2016 @ SLP (C) NO.36657/2016 @ CC NO.4271/2016
C.A. NO.12118/2016 @ SLP(C) NO.36661/2016 @ CC NO.4315/2016
C.A. NO.12122/2016 @ SLP(C) NO.36665/2016 @ CC NO.4326/2016
C.A. NO.12125/2016 @ SLP(C) NO. 36668/2016 @ CC NO.4331/2016
C.A. NO.12128/2016 @ SLP (C) NO.36671/2016 @ CC NO.4422/2016
C.A. NO.12131/2016 @ SLP (C) NO.36676/2016 @ CC NO.4468/2016
C.A. NO.12132/2016 @ SLP(C) NO.36711/2016 @ CC NO.4497/2016
C.A. NO.12134/2016 @ SLP (C) NO.36713/2016 @ CC NO.5254/2016
C.A. NO.12135/2016 @ SLP(C) NO.36715/2016 @ CC NO.5256/2016
C.A. NO.12136/2016 @ SLP (C) NO.36716/2016 @ CC NO.5301/2016
C.A. NO.12086/2016 @ SLP(C) NO.36640/2016 @ CC NO. 6118/2016

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C.A. NO.12091/2016 @ SLP(C) NO.36643/2016 @ CC NO.6138/2016
C.A. NO.12095/2016 @ SLP(C) NO.36644/2016 @ CC NO.6179/2016
C.A. NO.12100/2016 @ SLP(C) NO.36646/2016 @ CC NO.6459/2016
C.A. NO.12104/2016 @ SLP(C) NO.36649/2016 @ CC NO.6552/2016
C.A. NO.12108/2016 @ SLP(C) NO.36651/2016 @ CC NO.7720/2016
C.A. NO.12109/2016 @ SLP(C) NO.36653/2016 @ CC NO.7729/2016
C.A. NO.12113/2016 @ SLP(C) NO.36656/2016 @ CC NO.7956/2016
C.A. NO.12117/2016 @ SLP(C) NO.36660/2016 @ CC NO.7969/2016
C.A. NO.12120/2016 @ SLP(C) NO.36663/2016 @ CC NO.7990/2016
C.A. NO.12123/2016 @ SLP(C) NO.36666/2016 @ CC NO.8001/2016
C.A. NO.12127/2016 @ SLP(C) NO.36670/2016 @ CC NO.8014/2016
C.A. NO.12130/2016 @ SLP(C) NO.36675/2016 @ CC NO.8051/2016
C.A. NO.12133/2016 @ SLP(C) NO.36712/2016 @ CC NO.8065/2016
C.A. NO.12129/2016 @ SLP(C) NO.36672/2016 @ CC NO.8070/2016
C.A. NO.12126/2016 @ SLP(C) NO.36669/2016 @ CC NO.8074/2016
C.A. NO.12124/2016 @ SLP(C) NO.36667/2016 @ CC NO.8151/2016
C.A. NO.12121/2016 @ SLP(C) NO.36664/2016 @ CC NO.8698/2016
C.A. NO.12119/2016 @ SLP(C) NO.36662/2016 @ CC NO.9218/2016
C.A. NO.12116/2016 @ SLP(C) NO.36658/2016 @ CC NO.11431/2016
C.A. NO.12074/2016 @ SLP(C) NO.9643/2016

J U D G M E N T

KURIAN, J.

Delay condoned.

2. Leave granted.

3. It is brought to our notice that the appeals on identical issues, filed by the Delhi Development Authority have already been dismissed by this Court. Therefore, reserving the liberty for fresh acquisition within a period of one year granted in the said appeals, these appeals are also dismissed.

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4. Pending applications, if any, stand disposed of.

5. No costs.

.....J.
[KURIAN JOSEPH]

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

NEW DELHI;
DECEMBER 08, 2016.

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1(1-16)

ANNEXURE 7

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (Civil) No. Diary No. 27968/21 of 2021

IN

CIVIL APPEAL NO.4590 OF 2016

[Under Order XLVII of Supreme Court Rules 2013]

IN THE MATTER OF:

Delhi Development Authority
Through its Vice Chairman
INA, Vikas Sadan, New Delhi

Petitioner

VERSUS

1. Sh. Satya Narain Prakash Punj
S/o Late Sh. Pt. Kanahya Lal Punj
R/o 10, Prithvi Raj Road,
New Delhi - 110011
Through His Attorney Holder
Sh. Uday Punj,
S/o Sh. Satya Narain Prakash Punj
R/o 55, Sultanpur Farms,
New Delhi – 110030

Cont. Resp.No.1

2. Union of India,
Through, Land Acquisition Collector
Tis Hazari Courts, Delhi -110054

Cont. Resp.No.2

3. Delhi Administration,
Through its Secretary,
Land & Building Department,
Vikas Bhawan, I.P. Estate.
New Delhi -110002

Cont. Resp.No.3

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(CAUSE-TITLE IN THE CIVIL APPEAL)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4590 OF 2016

[Under Order XXI Rule 3(1) (a) of Supreme Court Rules 2013]

IN THE MATTER OF:

POSITION OF PARTIES

	In High Court	In this Court
Delhi Development Authority Through its Vice Chairman INA, Vikas Sadan, New Delhi	Respondent No.2	Petitioner

VERSUS

1. Sh. Satya Narain Prakash Punj S/o Late Sh. Pt. Kanahya Lal Punj R/o 10, Prithvi Raj Road, New Delhi- 110011 Through His Attorney Holder Sh. Uday Punj, S/o Sh. Satya Narain Prakash Punj R/o 55, Sultanpur Farms, New Delhi -- 110030	Petitioner	Cont. Resp.No.1
2. Union of India, Through, Land Acquisition Collector Tis Hazari Courts, Delhi -110054	Respondent No.2	Cont. Resp.No.2
3. Delhi Administration, Through its Secretary, Land & Building Department,		

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Vikas Bhawan, I.P. Estate.

New Delhi -110002

Respondent No.3 Cont. Resp.No.3

A PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA READ WITH ORDER XLVII OF THE SUPREME COURT RULES, 2013

To

The Hon'ble Chief Justice of India and His Companion Judges of the Supreme Court of India

The Humble Petition on behalf of the Petitioner above named

MOST RESPECTFULLY SHEWETH:

1. The present petition under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013 is being filed seeking review of the final order dated 28.4.2016 passed by this Hon'ble Court in Civil Appeal No.4590 of 2016 by which this Hon'ble Court has been pleased to dismiss the Civil Appeal arising out of the final judgment and order dated 23.2.2015 passed by Hon'ble High Court of Delhi at New Delhi passed in Writ Petition (Civil) 6390/2014, wherein the Hon'ble High Court allowed the writ petition filed by the respondent. A true copy of the order dated 28.4.2016 passed by the Hon'ble Supreme Court in Civil Appeal No.4590/2016 is annexed herewith and marked as **ANNEXURE P/1** [Pages 18-25].

2. That this petition for review is being preferred by the Petitioner-Delhi Development Authority in light of the liberty granted by this Hon'ble Court in paragraph-217 of the judgment reported in (2018) 3 SCC 412 passed on 8.2.2018

which has since been affirmed by a Constitution Bench of this Hon'ble Court reported in (2020) 8 SCC 129 passed on 6.3.2020 titled Indore Development Authority V/s Manohar Lal & Ors., whereby and whereunder, this Hon'ble Court had interpreted Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as 'the Act of 2013') and overruled the Judgment rendered in case of Pune Municipal Corporation vs. Harakchand Misrimal Solanki reported in (2014) 3 SCC 183, as well as overruled those Judgments in which Pune Municipal Corporation (*supra*) has been followed.

3. That this Hon'ble Court in paragraph-366 of the said Judgment passed in Indore Development Authority's case (supra) (2020) 8 SCC 129, in sub-paragraph-3 clarifies the position that the acquisition proceeding shall not lapse if any one process out of the given two processes i.e. compensation or possession has been completed and in the instant case the physical possession of this land was handed over to the Delhi Development Authority by LAC/L&B Dept., Govt. of NCT of Delhi, on 21.4.2007. Para 366.3 of the said Judgment of Indore Development Authority (supra) is reproduced as under-

> *"366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor*

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compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse."

A true copy of the judgment dated 6.3.2020 passed by this Hon'ble Supreme Court reported in (2020)8 SCC 129 is annexed herewith and marked as **ANNEXURE P/2**[Pages 26-291].

4. That it is most humbly submitted that the dispute pertains to the land comprised in Khasra Nos. 67, 86, 88, 479/396/87, 480/396/87 admeasuring 30 Bighas 14 Biswas situated in the Revenue Estate of Village Masoodpur, New Delhi.

5. That on 23.1.1965, the aforesaid land was notified for acquisition under section 4 of the Land Acquisition Act, 1894 vide Notification No.F.4(98)/64-L&H dated 23-01-1965 published in the Delhi Gazette, Part IV, Delhi Administration on 28-01-1965, for acquisition of 4,826 Bighas 4 Biswas of land, which also included the land of respondent No.1 for the purpose of planned development of Delhi.

6. That on 26.12.1968, declaration under section 6 of the LA Act bearing Notification/declaration bearing No.F.4(98)/64-L&H(i) dated 26.12.1968 was published in the Delhi Gazette, Part-IV, Delhi Administration on 16.1.1969.

7. That in the year 1980, Respondent No.1 and his brother challenged the said acquisition proceedings before this Hon'ble Court by way of a Civil Writ Petition No. 1802/1980, praying for quashing of the said acquisition proceedings.

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8. That the then Acquisition Collector, Delhi passed the Award bearing No.90/80-81dated 29.12.1980 in respect of Land in Dispute.

9. That the aforesaid writ petition was clubbed alongwith a batch of other Writ petitions filed before the High Court challenging the acquisition proceedings. The lead case in the said batch was that of Roshanara Begum Vs. UOI & Ors. bearing writ petition No.701/1981 which were heard and dismissed by the High Court in terms of the detailed order dated 14.12.1995 passed in the case of Roshanara Begum Vs. UOI & Ors., reported as AIR 1996 Delhi 206, and accordingly the Hon'ble High Court declined to quash the acquisition proceedings by the judgment dated 14.12.1995.

10. That on 21.4.2007 the physical possession of this land was handed over to the Delhi Development Authority by LAC/L&B Dept., Govt. of NCT of Delhi.

11. That on 1.1.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 was passed by the Parliament and came into force on 1.1.2014.

12. That despite the earlier writ petition of Respondent No.1 having been already dismissed by the Hon'ble High Court, however on the same set of facts and pleadings the respondent No.1 challenged the same land acquisition proceedings in respect of which award had already been made by filing writ petition being W.P (C) No.6390/2014 in the Hon'ble High Court of Delhi praying for the following relief:-

"A. Issue a writ of Certiorari or any other writ, order or direction in the nature thereby quashing the

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Notification No.F.4(98)/64-L&H dated 23-01-1965 under section 4 of the land acquisition act; Notification/declaration under Section 6 of the Land Acquisition Act bearing No.F.4(98)/64-L&H(i) dated 26.12.1968 and also further quashing the Award bearing No. 90/80-81 dated 29.12.1980 in respect of the petitioners' land which bore khasara Nos. 67, 86, 479/396/87, 480/396/87 and 88 total measuring bearing No. 30 bighas 14 biswas, situated within the revenue estate of village Masoodpur in the Union Territory of Delhi and declaring that the proceedings under Land Acquisition Act, 1894 shall be deemed to have lapsed by operation of section 24 (2) of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013.;

B. Issue a writ of Mandamus or any other writ directing the Respondents to release the petitioner's Land bearing khasara No. 67, 86, 479/396/87, 480/396/87 and 88 total measuring bearing No.30 bighas 14 biswas, situated within the revenue estate of village Masoodpur in the Union Territory of Delhi, from acquisition; and

C. Pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case".

13. That on 31.12.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 being Ordinance No.9 of 2014 dated December 31, 2014 as passed

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by the Legislature, which gives a specific protection so that malafide petitions such as the present petition do not take unjust benefit of the Principal Act and the ambit and object of acquisition for planned development of Delhi does not suffer.

14. That the Petitioner-Respondent No.2 (in High Court) filed its detailed counter-affidavit rebutting in toto each and every incorrect averment made in the writ petition and specifically stating that the case of the respondents was not covered under the 2013 Act and their claim besides being hopelessly barred by limitation was not maintainable in the eyes of law.

15. That on 23.2.2015, the Hon'ble High Court after relying upon the Judgment passed by this Hon'ble Court in Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors. (2014) 3 SCC 183, and similar other cases allowed the Writ Petition filed by the Respondent. The para 5 of the Judgment passed by the Hon'ble High Court in Writ Petition can be read as under-

> "....*5. Without going into the controversy of physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-*
>
> *(1) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC183;.....*"

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16. That, being aggrieved by the Judgment and finding of the Hon'ble High Court, the petitioner preferred to file Special Leave to Appeal (Civil) No. 32635 of 2015, subsequently converted to Civil Appeal No.4590/2016 wherein this Hon'ble Court vide order dated 28.4.2016 did not interfere with the decision of the Hon'ble High Court which was passed by relying upon the Decision rendered Pune Municipal Corporation (supra) case and similar other cases.

17. That the Constitutional Bench of this Hon'ble Court vide it's Judgment dt. 6.3.2020 in Indore Development Authority case (supra) overruled the Judgment passed in Pune Municipal Corporation Case (supra) and the judgments of all the other cases where the Pune Municipal Corporation case (supra) was relied upon. The effect thereof is that the dismissal of the special leave petition ought to be reviewed and the Judgment and order of the Hon'ble high Court is deserved to quashed and set aside, particularly in view of the fact that the facts of the individual cases were not looked into by the Hon'ble High Court as well as by this Hon'ble Court.

18. That, it is most respectfully submitted that, this Hon'ble Court in its Judgment in case of Indore Development Authority Vs. Shailendra (dead) Th. LRs; (2018) 3 SCC 412 differed with the Judgment given in case of Pune Municipal Corporation.(supra) case and referred the matter to the larger bench for interpretation of said Section 24 of 'the Act of 2013'. In this judgment at para no. 217 this Hon'ble court had specifically held that, the decision rendered on the basis of Pune Municipal Corporation (supra) are open to be reviewed in appropriate case on the basis of this decision. Para 217 of this case can be read as under-

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> *"... The decision rendered in Pune Municipal Corporation (supra), which is related to Question No.1 and other decisions following, the view taken in Pune Municipal Corporation (supra) are per incuriam. The decision in Shree Balaji (supra) cannot be said to be laying down good law, is overruled and other decisions following the said decision to the extent they are in conflict with this decision, stand overruled. The decision in DDA v. Sukhbir Singh (supra) is partially overruled to the extent it is contrary to this decision. The decisions rendered on the basis of Pune Municipal Corporation (supra) are open to be reviewed in appropriate cases on the basis of this decision..."*

19. The above said decision of Indore Development Authority Vs. Shailendra (dead) Th. LRs; (2018) 3 SCC 412 has been affirmed by the Constitutional bench of this Hon'ble Court in Indore Development Authority Vs. Manoharlal; 2020 SCC OnLine SC 316 and on the basis thereof the present petition for review is being filed.

20. That the petitioner most respectfully submits that it has not filed any other petition seeking review/reconsideration of the final order passed by this Hon'ble Court in Civil Appeal No.4590/2016 either before this Hon'ble Court or any other court claiming the said same relief.

GROUNDS:-

The instant Review Petition rests inter-alia on the following grounds namely,

A. Because this Hon'ble Court vide the Judgment dated 6.3.2020 passed in in Indore Development Authority case

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(*supra*) overruled the Judgment passed in Pune Municipal Corporation Case and the judgments of all the other cases where the Pune Municipal Corporation case (supra) was relied upon.

B. Because the Hon'ble High Court interpreted section 24 (2) of 'the Act of 2013' and decided the matter on the basis of Pune Municipal Corporation (*supra*) case and this Hon'ble Court differed by the said decision in the case of Indore Development Authority Vs. Shailendra (dead) Th. LRs; (2018) 3 SCC 412. This Hon'ble Court while referring the matter to larger bench specifically held that the matters decided on the basis of Pune Municipal Corporation (*supra*) case are open to be reviewed.

C. Because the possession of land in this case was taken as on 21.4.2007 and in accordance to the interpretation of section 24 of 'the Act of 2013' in the case of Indore Development Authority (supra), the acquisition proceeding shall not lapse.

C. Because the Judgment dt. 23.3.2015 passed by Hon'ble High Court is relied upon the Judgment passed by this Hon'ble Court in Pune Municipal Corporation (supra) and since the case of Pune Municipal Corporation (supra) in itself declared per incuriam hence, the judgment of Writ Court ought to be considered afresh in accordance with established position in Indore Development Authority (supra) case.

D. Because it could not be properly placed to the kind notice of this Hon'ble Court that the Hon'ble High Court seriously erred in reading section 24 (2) of 'the Act of 2013' in isolation of the proviso and seriously erred in declaring the acquisition proceedings as being lapsed, whereas the same had already attained finality.

E. Because it could not be properly placed to the kind notice of this Hon'ble Court that the Hon'ble High Court erred in deciding the matter at the stage of admission wherein rival submission on disputed question of facts were involved and thus exercising its extra ordinary discretionary jurisdiction and thereby negating the land acquisition proceedings which had already attained finality.

F. Because it could not be properly placed to the kind notice of this Hon'ble Court that the Hon'ble High Court erroneously declared the acquisition proceedings as being lapsed while the possession of the said land had already been taken.

G. Because it could not be properly placed to the kind notice of this Hon'ble Court that the Hon'ble High Court overlooked that respondents nos.1-3 had got absolutely no locus standi to file the writ petition, which was devoid of any merits, basis, justification or cause of action.

H. Because it could not be properly placed to the kind notice of this Hon'ble Court that the Hon'ble High Court ignored that the respondents nos. 1-3 having admittedly already filed civil suit against petitioner which was dismissed for non-prosecution and have further filed writ petition with respect to land in question for same very relief, thus the same was not maintainable or sustainable in facts or under the law and hence was liable to be dismissed with costs.

I. Because it could not be properly placed to the kind notice of this Hon'ble Court that the order passed by the Hon'ble High Court is otherwise bad in law as well as on facts and deserves to be set aside by this Hon'ble Court.

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J. Because the petitioner herein is left with no other remedy except to approach this Hon'ble Court in its inherent review jurisdiction praying therein for a right to be heard.

PRAYER:-

It is therefore most respectfully prayed that Your Lordships may graciously be pleased to:-

i. Review the final order dated 28.4.2016 passed by the Hon'ble Court in Civil Appeal No.4590/2016 and allow the appeal of the petitioner and/or

ii. Pass such other or further order/(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

DRAWN & FILED BY:

[SH ANTANU SAGAR]
Advocate on Record for the Petitioner

Drawn On: 15.2.2021

Filed On: 12.11.2021

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IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (Civil) No. of 2021

IN

CIVIL APPEAL NO.4590 of 2016

IN THE MATTER OF:

Delhi Development Authority ....PETITIONER

VERSUS

Satya Narain Prakash Punj & ●rs. ..RESPONDENTS

CERTIFICATE

Certified that the present First Review Petition is confined only to the pleadings of the review petition. No additional facts, documents or grounds which were not part of the records before the Courts below, have been pleaded herein. Further certified that the copies of the documents/annexures attached to the Review Petition and are necessary to answer the questions of law raised herein. This Certificate is given by the counsel for the petitioner on instructions of the petitioner whose affidavit is filed in support of the first Review Petition.

[SH ANTANU SAGAR]

Advocate on Record for Petitioner

New-Delhi

Dated: 12.11.2021

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IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION (Civil) No. of 2021

IN

CIVIL APPEAL NO.4590 of 2016

IN THE MATTER OF:

Delhi Development Authority ....PETITIONER

VERSUS

Satya Narain Prakash Punj & Ors. ..RESPONDENTS

AFFIDAVIT

I, I. M. Khan, the deponent do hereby solemnly affirm presently at New Delhi and state as under:

1. That I am the DLA of the petitioner in the above mentioned case and I am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That I have read over and understood the accompanying Review Petition (paras 1to29 (Pages 1 to 13) and having understood the contents thereof, I say that the facts stated therein are true and correct to the best of my knowledge.
3. That the Annexures are true copies of their respective Originals
4. That the instant Review Petition paper book contains total pages [299].
5. That the facts stated in this affidavit are true and correct to the best of my knowledge. No part of the same is false and nothing material has been concealed therefrom.

NOTARY A.N. SINGH Supreme Court of India Regn. No.16959 Exp. Date 31.01.2025 GOVT. OF INDIA

DEPONENT
I. M. Khan

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VERIFICATION

I , the above named deponent do hereby verify that the facts stated in the above affidavit are true and correct to the best of my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at Delhi on this 25th day of October, 2021

DEPONENT

I identify the deponent who has signed before me.

NOTARY
A.N. SINGH
Supreme Court of India
Regn. No.16959
Exp. Date 31.01.2025
GOVT. OF INDIA

ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, Delhi
Mob.: 9718139591, 7982[illegible]

ANNEXURE 8 124

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION(CIVIL) DIARY NO. 3373 OF 2022

IN

CIVIL APPEAL NO. 4554 OF 2016

Certified to be True Copy
Assistant Registrar (Judl.)
Supreme Court of India

DELHI DEVELOPMENT AUTHORITY ..... PETITIONER(S)

VERSUS

080689.

SHASHI KHER & ORS. ..... RESPONDENT(S)

AND

REVIEW PETITION(CIVIL) DIARY NO. 27968 OF 2021

IN

CIVIL APPEAL NO. 4590 OF 2016

O R D E R

Application for oral hearing of review petition (Dy. No.27968/2021) is rejected.

The present petitions have been filed by the petitioner seeking review of order dated 28.04.2016 whereby this Court dismissed the civil appeals filed by the petitioner herein.

There is a delay of 1386 days in filing the review petitions which has not been satisfactorily explained by the petitioner.

Signature Not Verified
Digitally signed by
Date: 2020.12.23
Reason:

...2/-

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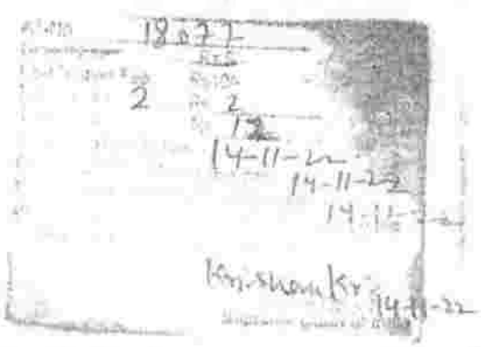
Having carefully gone through the petitions for review and the papers connected therewith, we do not find any ground warranting review of order dated 28.04.2016.

The review petitions are, therefore, dismissed on the ground of delay as well as on merits.

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

.....J.
[DR. DHANANJAYA Y. CHANDRACHUD]

New Delhi;
March 31, 2022



ANNEXURE 9 126

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.A. NO. OF 2023
IN
REVIEW PETITION (C) DIARY No. 27968 OF 2021
IN
CA No. 4590 OF 2016

IN THE MATTER OF:

DELHI DEVELOPMENT AUTHORITY ...PETITIONER

VERSUS

SATYANARAIN

PRAKASH PUNJ & ORS. ...RESPONDENTS

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5.	**ANNEXURE A-4** A true copy of the order dated 15.02 .2022 passed by this Hon'ble Court in *Delhi Development Authority vs Pritam Kaur & others* in R.P. (C) No. 183 of 2022	36–39
6.	**ANNEXURE A-5** A true copy of the order dated 04.11.2022 passed by this Hon'ble Court in CA No. 7962 of 2022	40 –48
7.	**I.A NO. OF 2023** APPLICATION FOR CONDONATION OF DELAY.	49 –55
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9.	Proof of Service	58

DELHI DEVELOPMENT AUTHORITY

Through

Manika Tripathy
Advocate-On-Record
Standing Counsel for DDA
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Supreme Court of India,
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Email: manikatripathy@yahoo.com
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Place: New Delhi
Date: 30.01.2023

, 128 1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.A.NO. OF 2023
IN
REVIEW PETITION (C) DIARY No. 27968 OF 2021
IN
CA No. 4590 OF 2016

IN THE MATTER OF:

DELHI DEVELOPMENT AUTHORITY ...PETITIONER

VERSUS

SATYA NARAIN
PRAKASH PUNJ & ORS. ...RESPONDENTS

AN APPLICATION FOR RECALL OF THE ORDER DATED 31.03.2022 PASSED BY THIS HON'BLE COURT IN REVIEW PETITION(CIVIL)DIARYNO.27968/2021INCA NO. 4590 OF 2016 AND ORDER DATED 28.04.2016 PASSED BY THIS HON'BLE COURT IN CIVIL APPEAL NO. 4590 OF 2016 QND/OR CLARIFY AND/OR GIVE APPROPRIATE DIRECTIONS.

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS HON'BLE COMPANION JUSTICES OF THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner had preferred the above-captioned Review Petition against the order dated 28.04.2016 passed by this Hon'ble Court in Civil Appeal No. 4590 of 2016.

2. That the above-mentioned Civil Appeal was filed before this Hon'ble Court against the final order and judgement dated 23.02.2015 passed by the Hon'ble High Court of Delhi in Writ Petition (C) No. 6390 of 2014. The Hon'ble High Court of Delhi in the said Writ Petition, had allowed the Writ Petition of the Writ Petitioners i.e. the Respondent No. 1 herein thereby declaring the acquisition proceedings initiated under the Land Acquisition Act, 1894 Act to have lapsed.

3. That it is submitted that this Hon'ble Court vide its order dated 31.03.2022 dismissed the above-mentioned Review Petition (C) Diary No. 27968 of 2021 filed by the Petitioner. A true copy of the order dated 31.03.2022 passed by this Hon'ble Court in Review Petition (C) Diary No. 27968 of 2021 is annexed and marked herewith as **ANNEXURE A-1 [Page No. 18 to 19].**

4. That it is submitted that this Hon'ble Court vide its order dated 28.04.2016 dismissed the above-mentioned Civil Appeal No. 4590 of 2016 filed by the petitioner. A true copy of the order dated 28.04.2016 passed by this Hon'ble Court in Civil Appeal No. 4590 of 2016 is annexed and marked herewith as **ANNEXURE A-2 [Page No. 20 to 28].**

5. That it is submitted that the present Application is being preferred by the Petitioner in view of the recent landmark judgment of this Hon'ble Court in *Indore Development Authority Vs. Manoharlal & Ors., (2020) 8 SCC 129* (hereinafter referred to as Indore Development Judgment) which has finally settled the law regarding acquisition proceedings. In the said Constitutional Bench judgment, this Hon'ble Court has defined the ambit and scope of Section 24(2) of the Land Acquisition Act, 2013 which now governs this field and therefore, the present Petition raises substantial questions of law in light of the same.

6. The facts which gave rise to the aforesaid Review Petition are as follows:

a. The Notification No. F.4(98)/64/L&H dated 23.01.1965 was issued by the Government of Delhi under Section 4 of the Land Acquisition Act, 1894 notifying an area of land including the land of the Respondent No. 1 in Khasra No. 67, 86, 88, 479/396/87, 480/396/87 admeasuring 30 Bighas 14 Biswas situated in the Revenue Estate of Village Masoodpur, New Delhi.

b. The Notification No. F.4(98)/64/L&H(i) under Section 6 of the Land Acquisition Act, 1894 was issued on 26.12.1968 by the Land and Building Department Government of NCT of Delhi.

c. The Award No. 90/1980-81 dated 29.12.1980 was passed under Section 11 of the Land Acquisition Act,

1894 for the aforesaid land notified in the revenue estate of Village Masoodpur, New Delhi.

d. That the amount of compensation in respect of the acquisition was deposited in the treasury and thus it amounted to deposit "in any account maintained for this purpose", thus the entire period during which the amount was lying in the treasury ought to have been excluded. The Hon'ble High Court has specifically noted the submissions of the petitioner authority (respondents before the Hon'ble High Court) in this regard.

e. That the physical possession of the land in Khasra No. 67, 86, 88, 479/396/87, 480/396/87 admeasuring 30 Bighas 14 Biswas has already been taken over and handed over to the Petitioner Authority on 21.04.2007 by the LAC/L&B Department.

f. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, was notified by the Government of India (herein after referred to as the 'The Land Acquisition Act, 2013') and came into effect from 01.01.2014.

g. The Respondents filed a Writ petition bearing W.P. (C) No. 6390 of 2014, before the Hon'ble High Court of Delhi, challenging the said acquisition proceedings and sought the benefit of Section 24(2) of the Land Acquisition, Act 2013.

h. The Hon'ble High Court in the aforesaid Writ Petition passed an order dated 23.02.2015 declaring that the aforesaid acquisition proceeding in respect of the subject land has lapsed. A true copy of the order dated 23.02.2015 passed by the Hon'ble High Court of Delhi in Writ Petition (C) No. 6390 of 2014 is annexed herewith and marked as **ANNEXURE A-3 [Page No. 29 to 35].**

i. The Petitioner herein filed a Civil Appeal No. 4590 of 2016 before this Hon'ble Court challenging the aforesaid judgment/ order dated 23.02.2015 and the same was dismissed by this Hon'ble Court on 28.04.2016.

j. In the meantime, on 08.02.2018, a Three Judges Bench of this Hon'ble Court passed a judgment in the case of *Indore Development Authority Vs. Shailendra (Dead) through LRs and Ors. reported in 2018 (2) SCALE 1* thereby laying down the effect, scope and impact of Section 24 of the Act of 2013, particularly the proviso to under Section 24(2) of the Land Acquisition Act, 2013.

k. That thereafter, vide the landmark and constitutional Bench judgment dated 06.03.2020, the Hon'ble Five Judges Constitutional Bench of this Hon'ble Court has finally settled the law in the case of Indore Development Authority Vs. Manoharlal & Ors. AIR 2020 SC 1496. And therefore, in the wake of the

newly settled proposition of law as settled by this Apex Court, the order of this Hon'ble Court in the Civil Appeal and the Review Petition seems untenable in the eyes of law.

7. That at the outset, it is humbly submitted that, the delay in filing the present application is unintentional and inadvertent. The issue at hand was subject to several years of litigation before this Hon'ble Court and therefore, the Petitioner could challenge the same only after the issue was finally settled.

8. That it is submitted that on 08.02.2018, a Three Judges Bench of this Hon'ble Court passed a judgment in the case of *Indore Development Authority Vs. Shailendra (Dead) through LRs and Ors. reported in 2018 (2) SCALE 1* thereby laying down the effect, scope and impact ofSection 24 of the Act of 2013, particularly the proviso to under Section 24(2). This Hon'ble Court held that the decision in the case *of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki, 2014 (3) SCC 183,* is per incuriam and further held as follows:

> *"217. The decisions rendered on the basis of Pune Municipal Corpn. are open to be reviewed in appropriate cases on the basis of this decision."*

9. That thereafter, the questions raised therein were again referred for adjudication by a larger bench of Five Judges Constitutional Bench of this Hon'ble Court. Vide judgment dated 06.03.2020, the Constitutional Bench has settled the contradictory and fallacious interpretation of Section 24 of

the Land Acquisition (New) Act and has overruled the *Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183.*

10. The Constitutional Bench of this Hon'ble Court has finally settled the law in the case of *Indore Development* thereby laying down the effect, scope and impact of Section 24 of the Act of 2013, by holding that Section 24 of the Act of 2013 does not revive stale and time-barred claims and does not reopen concluded proceedings. It was held by this Hon'ble Court that:

> ***"362.*** *Resultantly, the decision rendered in Pune Municipal Corpn. is hereby overruled and all other decisions in which Pune Municipal Corpn. has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.*

The Hon'ble Apex Court further held that:

> *"366.3 The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.*

That since in the instant case the compensation has been paid and even possession has been taken of the major portion of the land, the instant case is covered by the *Indore Development Judgment*. It is submitted that the amount of compensation in respect of the acquisition was deposited in the treasury and thus it amounted to deposit "in any account maintained for this purpose", thus the entire period during which the amount was lying in the treasury ought to have been excluded. Apart from that, even the physical possession the land comprising in Khasra No. 67, 86, 88, 479/396/87, 480/396/87 admeasuring 30 Bighas 14 Biswas has already been taken over and handed over to the Petitioner Authority on 21.04.2007 by the LAC/L&B. Therefore, the instant case satisfies both

the ingredients of the Indore Development Judgment (supra) and hence the order of the Hon'ble Court deserves to be set aside.

11. That it is submitted that this Hon'ble Court in its aforementioned judgment restricted landowners to seek invalidation of acquisition proceedings merely because the mode of deposit of the compensation amount was in the treasury instead of the Court and held as follows:

> "*200. ...Section 24(2) deals with the expression where **compensation has not been paid**. It would mean that it has not been tendered for payment under Section 31(1). Though the word 'paid' amounts to a completed event however once payment of compensation has been offered/tendered under Section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remained unpaid due to refusal to accept, by the landowner and Collector is prevented from making the payment. Thus, the word 'paid' used in Section 24(2) cannot be said to include within its ken 'deposit' under Section 31(2). For that special provision has been carved out in the proviso to Section 24(2), which deals with the amount to be deposited in the account of beneficiaries. Two different expressions have bene used in Section 24. In the main part of Section 24, the word 'paid' and in its proviso 'deposited' have been used*"

It was further held that the word 'paid' used in Section 24 of the Act of 2013 would operate within the same meaning given to the phrase 'tender of payment' in Section 31(1) of the Act of 1894. The word 'deposited' as used in Section 31(2) of the aforementioned act is not included within the meaning of the words 'paid' under Section 24 of the Act of 2013 and 'tender of payment' under Section 31(1) of the Act of 1894 because the aforementioned words carry different meanings and cannot be used interchangeably. Under Section 24(2) of the Act of 2013, the words 'paid/tender' do not necessarily mean that the compensatory amount should be 'deposited' in Court, as has been provided in Section 31(2) of the Act of 1894. If the compensatory amount is not deposited in Court as mandated by Section 31(2) of the Act of 1894, the same does not result in the lapse of acquisition proceedings under Section 24(2) of the Act of 2013. The only appropriate consequence due to the failure of such deposit may be an elevated rate of interest in accordance with Section 34 of the Act of 1894. Thus, the payment tendered, lying deposited in the treasury in the names of the claimants as envisaged under the proviso to Section 24(2) of the Act of 2013 can be treated as 'payment made to the claimant'.

12. This Hon'ble Court failed to appreciate the correct interpretation of the effect, scope and impact of Section 24 of the Act of 2013, in particular, the proviso to Section 24(2) on the payment of compensation in lieu of the acquired land. The Petitioner in the present case has already validly and

legally taken possession of the subject land vide possession proceedings and has deposited the assessed amount of compensation in the names of the Respondents in lieu of the acquisition so made vide cheque submitted to the L&B Department, New Delhi. This, therefore, satisfies the condition mentioned by the legislature in Clause 18 of the statement of objects with respect to the provision under Section 24(2) and this Hon'ble Court has failed to appreciate the same. The statement is reproduced hereunder:

> *"18. The benefits under the new law would be available in all cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken."*

13. That it is further submitted that this Hon'ble Court has reiterated the observations made by the Constitutional Bench of this Hon'ble Court recently in its order dated 15.02.2022 in Review Petition (Civil) No. 183/2022 in case titled as ***Delhi Development Authority vs Pritam Kaur & others.*** In the said case, in the Review Petition, the Hon'ble Apex Court while relying on the Constitutional Bench judgment, has passed similar orders as are being sought in the present application and has recalled the order of this Hon'ble Court passed in the Civil Appeal. The Civil Appeal in the said matter has been restored and has been directed to be listed for hearing on the basis of the judgment passed by ble Court in *Indore Development Authority v. Lal* (2020) 8 SCC 129. A true copy of the order .02.2022 passed by this Hon'ble Court in ***Delhi***

Development Authority vs Pritam Kaur & others in R.P. (C) No. 183 of 2022 is annexed herewith and marked **ANNEXURE A-4 [Page No.36 to 39].**

14. That in the case of ***DDA versus Damini Wadhwa*** bearing Civil Appeal No. 7962 of 2022 titled Delhi Development Authority decided on 04.11.2022, the Hon'ble has held as under-

> *"As per the settled position of law, Agreement to Sell by itself does not confer any right, title, or interest. Even in the counter affidavit, the appellant doubted the genuineness of the transaction of the Agreement to Sell dated 22.05.2016. A specific plea was taken on behalf of the DDA on the locus of the original writ petitioner. However, the High Court has not at all dealt with and/or considered the issue with respect to the locus of the original writ petitioner. Be that it may, even considering the fact that the Agreement to Sell was of the year 2016 and considering the fact that the notification under Section 4 of the Act, 1894 was issued on 25.11.1980, therefore, it is apparent that the original writ petitioner allegedly derived the interest in the lands in question much after the acquisition proceedings were initiated and therefore, the respondent No. 1 – original writ petitioner can be said to be subsequent purchaser. In the recent decision of this Court in the case of* ***Godfrey Phillips (I) Ltd. & Ors.*** *(supra) after considering the other decisions on the right of the subsequent purchaser to claim lapse of acquisition proceedings, i.e., Meera*

Sahni Vs. Lieutenant Governor of Delhi & Ors., (2008) 9 SCC 173 and M. Venkatesh & Ors. Vs. Commissioner, Bangalore Development Authority, (2015) 17 SCC 1, it is specifically observed and held that subsequent purchaser has no right to claim lapse of acquisition proceedings. Similar view has been expressed by the Larger Bench judgment of this Court in the case of ***Shiv Kumar & Anr. Vs. Union of India & Ors., (2019) 10SCC 229.***" A true copy of the order dated 04.11.2022 passed by this Hon'ble Court in ***Delhi Development Authority vs Damini Wadhwa & others*** in CA No. 7962 of 2022 is annexed herewith and marked **ANNEXURE A-5 [Page No.40 to48].**

13. That this Hon'ble Court as well as the Hon'ble High Court of Delhi has failed to appreciate the true facts and circumstances of the matter. The acquisition of the land in question had already attained finality under the Act of 1894. The impact of the above order resulted in gain to one party and illegal sufferance to the Government with respect to the aforementioned land which was already been validly and legally acquired under the Act of 1894.

14. That in light of the abovesaid and the settled position of law it is clear that the issue at hand needs reconsideration by this Hon'ble Court as the same has now been finally settled by this Hon'ble Court in the Constitutional Bench Judgment. It is humbly submitted that the order dated 31.03.2022 passed by this Hon'ble Court will cause grave prejudice to the Petitioner Authority if the matter is not heard in light of the

recent judgment of *Indore Development Authority v. Manoharlal & Ors.* (2020) 8 SCC 129.

15. Furthermore, the delay caused in filing the present application was not deliberate as the issue was still pending before this Hon'ble Court at the time and it was only after the said issue was settled that the Petitioner could approach this Hon'ble Court.

16. That if the instant application is not allowed, the Petitioner will suffer grave and irreparable loss.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Recall the order dated 31.03.2022 passed by this Hon'ble Court in Review Petition (C) Diary No. 27968 of 2021 in CA No. 4590 of 2016; and/or Allow the present application for clarification/modification of order dated 31.03.2022 passed by this Hon'ble Court in review petition (C) D.no. 27968 of 2021 in Civil Appeal no. 4590 of 2016 and order dated 28.04.2016 passed by this Hon'ble Court in Civil Appeal No. 4590 of 2016 and/or

(ii) pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

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AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

Date: 30.01.2023 **(MANIKA TRIPATHY)**

Place: New Delhi ADVOCATE FOR THE PETITIONER

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(5)

Annexure 10

ITEM NO.5 COURT NO.1 SECTION XIV-A

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

MISCELLANEOUS APPLICATION Diary No.4543/2023

(Arising out of impugned final judgment and order dated 31-03-2022 in D No.27968/2021 passed by the Supreme Court of India)

DELHI DEVELOPMENT AUTHORITY Petitioner(s)

VERSUS

SATYA NARAIN PRAKASH PUNJ Respondent(s)

(With IA No.22509/2023 - CONDONATION OF DELAY IN FILING and IA No.22507/2023 - RECALLING THE COURTS ORDER)

Date : 21-08-2023 These matters were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mrs. Manika Tripathy, AOR
Mr. Ashutosh Kaushik, Adv.
Mr. Chirantan Saha, Adv.

Mr. Shantanu Sagar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

1 The delay of 286 days in filing the Miscellaneous Application is condoned.

2 The review which was filed by the Delhi Development Authority against the dismissal of the Civil Appeal on 28 April 2016 suffered from a delay of 1386 days. The review was dismissed on 31 March 2022 by this Court both on the grounds of delay as well as on merits.

2 In this backdrop, the Miscellaneous Application is misconceived and is accordingly dismissed.

(CHETAN KUMAR)
A.R.-cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar

True Copy

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ANNEXURE II (COLLY)

as to the cause for delay no such saving clause is to be found now. The Legislature in its wisdom has made the observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition."

24. Since the above decision in *Venkateswara Rao's case* in August 1968, though Parliament has made certain amendments in Section 8 of the Act in 1969, it has not considered if necessary till now to amend the Act to confer, on persons challenging an election, benefits similar to those available to them under the proviso to the repealed Section 85 of the Act, for, as we venture to think, it did not want delays to occur in the disposal of election petitions as in the past.

25. For all these reasons we have come to the conclusion that the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay.

26. The appeal as well as C. M. P. No. 7820 of 1973 are accordingly dismissed but in the circumstances without costs.

(1974) 2 Supreme Court Cases 151

(Before K. K. Mathew and A. Alagiriswami, JJ.)

IFTIKHAR AHMED AND OTHERS . . Appellants ;

Versus

SYED MEHARBAN ALI AND OTHERS . . Respondents.

Civil Appeal No. 1646 (N) of 1967†, decided on February 26, 1974

Civil Procedure Code, 1908 (5 of 1908) — Section 11 — Res judicata — Nature and applicability — Points which are to be established for a judgment to operate as resjudicata between or among co-defendants

Arbitration Act, 1940 (10 of 1940) — Section 30 — Dispute between appellants and respondents regarding title to properties arising in connection with consolidation proceedings — Matter referred to arbitrator — In a previous case between respondents and a third party High Court had already held that land in question belonged to predecessors of appellants as respondent's predecessors had relinquished their rights — Held — High Court's decision would operate as resjudicata in present dispute —Arbitrator's award can be said to be vitiated by error of law apparent on its face if it is based on proposition that judgment of High Court would not operate as res judicata on the question of title to the properties in question — Such an award liable to be quashed under Section 30 (Para 16)

Arbitration Act, 1940 (10 of 1940) — Generally — Provisions of the Act will apply to proceedings by an arbitrator under U. P. Consolidation of Holdings Act, 1953 (Para 16)

HELD:

For a judgment to operate as resjudicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defend-

†Appeal by special leave from the judgment and Order, dated 19th May 1967, of the Allahabad High Court in First Appeal No. 424 of 1969.

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ants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit; and (3) that the Court actually decided the question. (Para 13)

In considering any question of res judicata the Court has to bear in mind that the rule of res judicata "while founded on ancient precedent is dictated by a wisdom which is for all time" and that the application of the rule by the Courts "should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law". (Para 15)

Chandulal v. Khalilur Rahaman, 77 IA 27, approved.

Ram Bhai v. Ahmed Said Akhtar Khan, AIR 1938 Lah 571, approved.

Sheoparsan Singh v. Ramnandan Prasad, 43 IA 91, relied on.

Charan Singh v. Babulal, 1966 Supp SCR 63, relied on.

Appeal allowed B-M/1932/C

Advocates who appeared in this case:

J. P. Goel and *Sobhamal Jain*, Advocates, for Appellants;

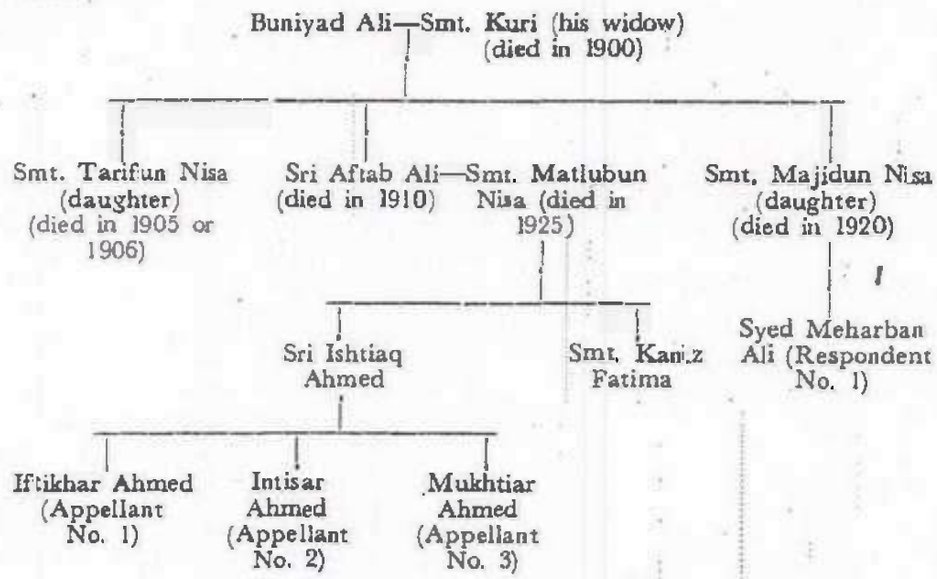
Hira Lal Jain, Advocate, for Respondent No. 1(*a*).

V. S. Desai, Senior Advocate (*M. M. Kshatriya*, Advocate, with him), for Respondent No. 1(*b*).

The Judgment of the Court was delivered by

MATHEW, J.—In this appeal, by special leave, the question for consideration is whether the High Court of Allahabad was right in setting aside the decree passed by the District Judge, Meerut, in appeal, setting aside an award passed by the arbitrator appointed under the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. In order to appreciate the question in issue, the following pedigree is useful:



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3. The appellants are the legal representatives of Ishtiaq Ahmed. In the consolidation proceedings under the Act with respect to the properties in question which originally belonged to Buniyad Ali, dispute arose between Ishtiaq Ahmed on the one hand and Meharban Ali and Kaniz Fatima on the other hand as regards the title to them. Meharban Ali and Kaniz Fatima claimed that they were co-bhumidhars of the property along with Ishtiaq Ahmed. Ishtiaq Ahmed contended that all the assets of Buniyad Ali were inherited by his son Aftab Ali and that after the death of Aftab Ali in 1910 and his widow in 1925, he became the exclusive owner of the properties as the other heirs had relinquished their rights in them. Ishtiaq Ahmed also claimed title to the properties by adverse possession. As the dispute between the parties was concerned with the title to the properties; the Consolidation Officer referred the matter to the Civil Judge, Meerut who referred the same to an arbitrator appointed under the Act. The arbitrator held that Meharban Ali and Kaniz Fatima had no title and so were not co-bhumidhars of the properties with Ishtiaq Ahmad. For reaching this conclusion the arbitrator mainly relied on a judgment of the High Court of Allahabad which, according to the arbitrator, operated as res judicata between the parties with respect to the title to the properties.

4. Both the parties filed objections to the award before the learned II Civil Judge, Meerut. He held that the judgment of the High Court relied on by the arbitrator did not operate as res judicata between the parties as regards the title to the properties and that the decision of the arbitrator, based as it was on that judgment operating as res judicata, was manifestly wrong and the award was consequently vitiated by an error of law apparent on the face of the award. He, therefore, set aside the award and remitted the case to the arbitrator for a fresh decision.

5. The arbitrator Mr. R. P. Gupta considered the case. He came to the conclusion, on the basis of the oral and documentary evidence, that the parties were co-bhumidhars of the properties except in respect of 9 bighas 3 biswas 3 biswansis and determined their shares in the properties. The arbitrator was of the view that the judgment of the High Court was not res judicata as regards the title of the parties to the properties.

6. Against this award, Ishtiaq Ahmed filed objections before the II Civil Judge, Meerut. The Civil Judge considered the objections and found that there was no manifest error or illegality in the award and he confirmed the award.

7. Ishtiaq Ahmed preferred an appeal from this decision before the District Judge. Ishtiaq Ahmed died during the pendency of the appeal and his legal representatives, the present appellants, prosecuted the appeal. The District Judge held that the award suffered from an error of law apparent on the face of the record in that the arbitrator ignored the judgment of the High Court which operated as res judicata as regards the title of the parties to the properties. He, therefore, allowed

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the appeal and set aside the decree appealed from and remitted the case to the arbitrator for a fresh decision.

8. The respondents filed a revision before the High Court against the decision of the District Judge and the High Court reversed the decision and restored the decree passed by the Civil Judge confirming the award.

9. Mr. Goel appearing for the appellants submitted that the High Court went wrong in reversing the decree of the District Judge. He argued that the award was vitiated by an error of law apparent on the face of the record as the award proceeded on the basis that the judgment of the High Court did not operate as res judicata in respect of the title of the parties to the properties, and therefore, the decision of the District Judge setting aside the award was correct.

10. Now, let us consider the nature of the judgment passed by the High Court and see whether it operated as res judicata in respect of the question of title of the parties to the properties and whether there was any manifest error of law apparent on the face of the award. That judgment related to the properties in dispute and was passed in second appeal from a decree in a suit (Suit No. 600 of 1934) instituted by Meharban Ali, Kaniz Fatima and Ishtiaq Ahmed for a declaration that the decree obtained in O. S. No. 128 of 1929 by Ishari Prasad, the defendant in that suit on the foot of a mortgage deed dated November 5, 1925 executed in his favour by Matlub-un-nissa did not affect the shares of Meharban Ali and Kaniz Fatima in the mortgaged properties and that the mortgage, and the decree obtained thereon were invalid to the extent of their shares in the properties. Ishari Prasad, the defendant in that suit, contended that Matlub-un-nissa, the mortgagor alone was entitled to the properties mortgaged and that the decree obtained by him on the mortgage was valid. In substance, the contention of Ishari Prasad was that Meharban Ali and Kaniz Fatima had no title to the properties as the latter and the former's mother had relinquished their shares and that the title to the properties vested exclusively in the mother of Ishtiaq Ahmed, namely, Matlub-un-nissa. The trial Court passed a decree dismissing the suit holding that Kaniz Fatima and Meharban Ali's mother relinquished their shares in the properties and that Matlub-un-nissa, the mortgagor, alone was entitled to the properties and, therefore, the mortgage, and the decree based thereon were valid. The plaintiffs in the suit (Suit No. 600 of 1934) preferred an appeal from the decree. That was dismissed. The decree dismissing the appeal was confirmed by the High Court in the second appeal filed by them.

11. There can be no doubt that by the written statement, Ishari Prasad, the mortgagee, denied the title of Kaniz Fatima and Meharban Ali to the properties and set up the contention that Matlub-un-nissa, the mortgagor, from whom Ishtiaq Ahmed traced his title, alone was entitled to the properties. There was, therefore, an actual conflict of interest between Ishtiaq Ahmed on the one hand and Kaniz Fatima and Meharban Ali on the other, and it was necessary to decide the conflict in order to

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give relief to the defendant (Ishari Prasad) and the Court decided that the properties belonged exclusively to the mortgagor, the mother of Ishtiaq Ahmed.

12. The effect of the judgment is that Kaniz Fatima and Meharban Ali failed to establish their contention that they had title to the properties, and, the question is, could they be allowed to agitate the same question ?

13. Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit; and (3) that the Court actually decided the question.

14. In *Chandu Lal* v. *Khalilur Rahaman*[1] Lord Simonds said :

> It may be added that the doctrine may apply even though the party, against whom it is sought to enforce it, did not in the previous suit think fit to enter an appearance and contest the question. But to this the qualification must be added that, if such a party is to be bound by a previous judgment, it must be proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided.

15. We see no reason why a previous decision should not operate as resjudicata between co-plaintiffs if all these conditions are mutatis mutandis satisfied. In considering any question of resjudicata we have to bear in mind the statement of the Board in *Sheoparsan Singh* v. *Ramnandan Prasad Narayan Singh*[2] that the rule of res judicata "while founded on ancient precedent is dictated by a wisdom which is for all time" and that the application of the rule by the Courts "should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".

The raison d'etre of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest; and to allow persons who had deliberately chosen a position to reprobate it and to blow hot now when they were blowing cold before would be completely to ignore the whole foundation of the rule. (See **Ram Bhaj v. Ahmad Said Akhtar Khan**[3]).

16. In the award, the arbitrator has stated that the judgment of the High Court in the second appeal would not operate as res judicata as regards the title to the properties but was only a piece of evidence. The arbitrator came to the conclusion that the respondents were in joint possession of the properties and, therefore, there was no ouster. If the judgment operated as res judicata, the respondents had no title to the properties. There was no finding by the arbitrator that by adverse possession they had acquired title to the properties at any point of time. The question which was referred to the arbitrator was the dispute between the parties as regards the title to the properties. If the judgment of the High Court operated in law as res judicata, it would be an error of law apparent on the face of the award if it were to say that the judgment

1. AIR 1950 PC 17 : 77 IA 27 : (1950) 1 Mad LJ 241.
2. AIR 1916 PC 78 : 43 IA 91 : ILR 43 Cal 694.
3. AIR 1938 Lah 571 : 178 IC 302 : 40 Punj LR 591.

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would not operate as res judicata. The District Judge was, therefore, right in holding that the award was vitiated by an error of law apparent on its face in that it was based on the proposition that the judgment of the High Court would not operate as res judicata on the question of title to the properties. If an award sets forth a proposition of law which is erroneous, then the award is liable to be set aside under Section 30 of the Arbitration Act. This Court has held that the provisions of the Arbitration Act will apply to proceedings by an arbitrator under the Act (see *Charan Singh* v. *Babulal*[4]).

17. It might be recalled that the II Civil Judge set aside the first award and remitted the case to the arbitrator for passing a fresh award under Section 16 of the Arbitration Act. That was only on the basis that the arbitrator committed an error of law in relying upon the judgment of the High Court as finally determining the title to the properties. As no appeal under Section 39 of the Arbitration Act lay from an order remitting an award to an arbitrator under Section 16 of the Arbitration Act, Ishtiaq Ahmed could not have challenged the order. There is, therefore, no reason why the appellants should be precluded from challenging the correctness of that order in this appeal and getting relief on that basis.

18. We set aside the order of the High Court and allow the appeal. In the circumstances we think it would be an empty formality to restore the decision of the District Judge and remit the case again to the arbitrator. We restore the award dated March 30, 1959, passed by Mr. K. C. Govil, the first arbitrator. We make no order as to costs.

(1974) 2 Supreme Court Cases 156

[Before D. G. Palekar, P. N. Bhagwati and V. R. Krishna Iyer, JJ.]

SHRIPAD GAJANAN SUTHANKAR .. .. Appellant;

Versus

DATTARAM KASHINATH SUTHANKAR AND OTHERS .. .. .. Respondents.

Civil Appeal No. 1264 of 1967†, decided on March 1, 1974

Hindu Law — Adoption — Mitakshara School — Partition of a Joint Hindu Family — Adoption by widow of a coparcenary long after the partition — Doctrine of relation back — Meaning, applicability and limitations — Whether adopted son can claim a share in the joint family property as if he was alive when adoptive father died — Whether an antecedent alienation binds a post-adopted son — Lawful alienation — Meaning of — Whether adopted son can reopen a prior partition so as to reunite a divided family for determining his share — Allotment of share must be on equitable principle — Hindu Succession Act, 1956 — Section 4 — Hindu Adoption and Maintenance Act, 1956 — Section 12

One 'M' was the head and his two sons 'G' (defendant No. 1) and 'K'

4. 1966 Supp SCR 63 : AIR 1967 SC 57 : (1967) 2 SCJ 378.

†Appeal from the Judgment and Decree, dated 8th April 1964 of the Mysore High Court at Bangalore in Regular First Appeal No. 100 of 1958.

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

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

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

(*i*) *ONGC-II*[1] dated 11-10-1991,

(*ii*) *ONGC-III*[2] dated 7-1-1994, and

(*iii*) *ONGC-IV*[3] dated 20-7-2007.

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

(2011) 3 Supreme Court Cases 408

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

M. NAGABHUSHANA .. Appellant;

Versus

STATE OF KARNATAKA AND OTHERS .. Respondents.

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

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

State of Karnataka v. *All India Manufacturers Organisation*, (2006) 4 SCC 683; *K.K. Modi* v. *K.N. Modi*, (1998) 3 SCC 573, *relied on*

The Supreme Court Practice, 1995, (p. 344), *relied on*

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

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

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

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

Pratap v. *State of Rajasthan*, (1996) 3 SCC 1, *followed*

Mariyappa v. *State of Karnataka*, (1998) 3 SCC 276, *distinguished*

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

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

Dismissing the appeal with costs, the Supreme Court

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Held:

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

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

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

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

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

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

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

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

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

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

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

G-D/47275/CV

Advocates who appeared in this case :
Anoop G. Chaudhari and Ms June Chaudhari, Senior Advocates (Raghavendra S. Srivatsa and Venkat Subramanium, Advocates) for the Appellant;
Dushyant Dave and Dr. Abhishek M. Singhvi, Senior Advocates (Anant Raman, R.V.S. Nair, Shanth Kr. V. Mahale and Ms Anitha Shenoy, Advocates) for the Respondents.

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

1. (2011)3 SCC 139 : (2011) 1 SCC (Civ) 662, *Offshore Holdings (P) Ltd. v. Bangalore Development Authority* 421*a-b*
2. (2011)3 SCC 1 : (2011) 1 SCC (Civ) 578, *Girnar Traders (3) v. State of Maharashtra* 421*d-e*
3. (2006)4 SCC 683, *State of Karnataka v. All India Manufacturers Organisation* 414*c-d*, 414*f*, 415*c-d*, 418*c*, 418*c-d*, 418*d*, 418*e*, 418*e*, 419*f*, 422*b*
4. (2002) 4 SCC 326, *Munithimmaiah v. State of Karnataka* 420*h*
5. (1998)3 SCC 573, *K.K. Modi v. K.N. Modi* 419*b*, 419*d*
6. (1998) 3 SCC 276, *Mariyappa v. State of Karnataka* 421*e*, 421*e-f*, 421*g*
7. (1996)3 SCC 1, *Pratap v. State of Rajasthan* 420*f*, 420*g-h*
8. (1990)2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348, *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* 418*f*
9. (1977)2 SCC 806 : 1977 SCC (L&S) 362, *State of U.P. v. Nawab Hussain* 418*e-f*
10. AIR 1965 SC 1150, *Devilal Modi v. STO* 418*a*
11. AIR 1961 SC 1457 : (1962) 1 SCR 574, *Daryao v. State of U.P.* 418*c*
12. (1947)2 All ER 255 (CA), *Greenhalgh v. Mallard* 418*c-d*, 418*e-f*
13. ILR (1927)8 Lah 384, *Lachhmi v. Bhulli* 416*d*, 417*a-b*
14. (1915-16) 43 IA 91 : ILR (1916) 43 Cal 694 (PC), *Sheoparsan Singh v. Ramnandan Singh* 417*g-h*

The Judgment of the Court was delivered by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(emphasis supplied)

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

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

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

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

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

1 (2006) 4 SCC 683

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

"79. The learned Single Judge erred in assuming that the lands acquired from places away from the main alignment of the road were not a part of the Project and that is the reason he was persuaded to hold that only 60% of the land acquisition was justified because it pertained to the land acquired for the main alignment of the highway. This, in the view of the Division Bench, and in our view, was entirely erroneous. The Division Bench was right in taking the view that the Project was an integrated project intended for public purpose and, irrespective of where the land was situated, so long as it arose from the terms of the FWA, there was no question of characterising it as unconnected with a public purpose. We are, therefore, in agreement with the finding of the High Court on this issue."

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

"*81.* In summary, having perused the well-considered judgment of the Division Bench which is under appeal in the light of the contentions advanced at the Bar, we are not satisfied that the acquisitions were, in any way, liable to be interfered with by the High Court, even to the extent as held by the learned Single Judge. We agree with the decision of the Division Bench that the acquisition of the entire land for the Project was carried out in consonance with the provisions of the KIAD Act for a public project of great importance for the development of the State of Karnataka. We do not think that a project of this magnitude and urgency can be held up by individuals raising frivolous and untenable objections thereto. The powers under the KIAD Act represent the powers of eminent domain vested in the State, which may need to be exercised even to the detriment of individuals' property rights so long as it achieves a larger public purpose. Looking at the case as a whole, we are satisfied that the Project is intended to represent the larger public interest of the State and that is why it was entered into and implemented all along."

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

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

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

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

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

> "In the *Mitakshra* (Book II, Chapter I, Section V, verse 5) one of the four kinds of effective answers to a suit is 'a plea by former judgment' and in verse 10, *Katyayana* is quoted as laying down that 'one against whom a judgment had formerly been given, if he brings forward the matter again, must be answered by a plea of *purva nyaya* or former judgment' (Macnaughten and Colebrooke's translation, p. 22). The doctrine, however, seems to have been recognised much earlier in Hindu jurisprudence, judging from the fact that both *Smriti Chandrika* (Mysore Edn., pp. 97-98) and *Virmitrodaya* (Vidya-Sagar Edn., p. 77) base the defence of *prang nyaya* (former decision) on the following text of the ancient law-giver *Harita*, who is believed by some Orientalists to have flourished in the 9th century BC and whose Smriti is now extant only in fragments—
>
> > 'The plaintiff should be non-suited if the defendant avers: "in this very affair, there was litigation between him and myself previously", and it is found that the plaintiff had lost his case.'
> >
> > There are texts of *Prasara* (Bengal Asiatic Society Edn., p. 56) and of *Mayukha* (Kane's Edn., p. 15) to the same effect.
> >
> > Among Muhammadan law-givers similar effect was given to the plea of 'Niza-i-munfasla' or 'Amar Mania taqrir mukhalif'. Under Roman Law, as administered by the Proetors' courts, a defendant could repel the plaintiff's claim by means of *exceptio rei judicatoe* or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in *Roby's Roman Private*

2 ILR (1927) 8 Lah 384

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

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

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

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

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

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

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

3 (1915-16) 43 IA 91 : ILR (1916) 43 Cal 694 (PC)

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

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

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

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

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

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

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

4 AIR 1965 SC 1150
5 AIR 1961 SC 1457: (1962) 1 SCR 574
6 (1947) 2 All ER 255 (CA)
7 (1977) 2 SCC 806 : 1977 SCC (L&S) 362
8 (1990) 2 SCC 715 : 1990 SCC (L&S) 339: (1990) 13 ATC 348

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

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

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

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

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

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

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

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

9 (1998) 3 SCC 573

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

> "28. *Acquisition of land.*— * * *
>
> (4) After orders are passed under sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section (1), a declaration shall, by notification in the Official Gazette, be made to that effect.
>
> (5) On the publication in the Official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances."

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

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

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

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

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

10 (1996)3 SCC 1
11 (2002) 4 SCC 326

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

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

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

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

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

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

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

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

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

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

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

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

(2011) 3 Supreme Court Cases 422

(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

HARYANA STATE WAREHOUSING CORPORATION AND OTHERS ... Petitioners;

Versus

JAGAT RAM AND ANOTHER ... Respondents.

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

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

(Paras 14 to 20; and 40 to 49)

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

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7691 - 7694 OF 2022
[Arising out of SLP (C) Nos. 21187-21190 of 2019]

S. RAMACHANDRA RAO ..... APPELLANT(S)

VERSUS

S. NAGABHUSHANA RAO & ORS. ..... RESPONDENT(S)

JUDGMENT

DINESH MAHESHWARI, J.

Leave granted.

2. These appeals are directed against the common order dated 28.06.2019 in Civil Revision Petition Nos. 758, 759, 760 & 761 of 2019, as passed by the High Court of Andhra Pradesh at Amaravathi, whereby the High Court has not approved the similar orders dated 07.02.2019, as passed by the Court of III Additional Senior Civil Judge at Vijayawada in four separate civil proceedings between the same contesting parties.

3. Put in a nutshell, the issue involved in the matter is concerning the capacity in which the plaintiff-appellant's wife, who is the General Power of Attorney[1] holder of the appellant and is also an enrolled advocate,

1 'GPA', for short.

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could appear and act on his behalf in the said civil proceedings. Even before passing of the orders which form the subject-matter of present appeals, this issue had led to various orders by the Trial Court at different stages of proceedings as also to a couple of orders by the High Court in challenge to the orders so passed by the Trial Court. Therein, the Trial Court and the High Court essentially held that merely for the wife of the appellant being an advocate, there was no prohibition in law for her to act on behalf of her husband as a GPA holder but, it was made clear that she would appear in-person as a power agent of her husband and not in her professional capacity as an advocate. The same proposition was iterated by the Trial Court in its orders dated 07.02.2019 in these very proceedings, while rejecting the objection against examination of the witnesses by the wife of the appellant in her capacity as GPA holder. However, in the impugned order dated 28.06.2019, the High Court has held that in view of a Division Bench decision of the same High Court, it was not permissible for a GPA holder to participate in the proceedings and, therefore, while disapproving the orders under challenge, the wife of the appellant has been given liberty to act as an advocate on behalf of her husband, the plaintiff, in these cases.

4. With the outline as aforesaid, we may take note of the relevant background aspects as follows:

4.1. A civil suit for partition of certain properties, being O.S. No. 368 of 1995, came to be filed before the said Trial Court, wherein the appellant

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was arrayed as the 3rd plaintiff. The appellant would submit that on 20.04.1987, he had executed a GPA in favour of his brother, the 1st respondent herein (the contesting respondent), who had prosecuted the said civil suit for partition. A decree was passed in the said suit on the basis of a compromise memo filed on 17.09.1995. The appellant would allege that he was not aware of filing of the said civil suit; that the decree was detrimental to his interest and was fraudulently obtained; and therefore, he revoked the GPA in favour of the 1st respondent on 26.01.1996. Later on, the appellant executed another General Power of Attorney dated 25.01.1997 in favour of his wife. Thereafter, on behalf of the appellant, I.A. No. 634 of 1997 was filed in the said O.S. No. 368 of 1995 by his new GPA holder (his wife) for recalling the judgment and decree passed in the suit. This apart, the appellant instituted three more civil suits, being (i) O.S. No. 388 of 1997, for declaration of title, possession, partition, and mesne profits; (ii) O.S. No. 104 of 1998, for rendition of accounts in relation to actions and bank transactions by the contesting respondent in his erstwhile capacity as agent of the appellant; and (iii) O.S. No. 445 of 1998, for partition and mesne profits.

4.2. While the said four civil proceedings remained pending, the GPA holder of the appellant, i.e., his wife, graduated in law and she was enrolled as an advocate in the year 2011.

4.3. On 27.09.2011, an application, being I.A. No. 1308 of 2011, was filed in said I.A. No. 634 of 1997 in O.S. No. 368 of 1995 under Order III

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Rule 2 read with Section 151 of the Code of Civil Procedure, 1908[2] read with Section 32 of the Advocates Act, 1961[3] read with Rules 32 and 33 of the Civil Rules of Practice in Andhra Pradesh read with Section 120 of the Evidence Act, 1872 with the prayer that the GPA holder of the appellant be permitted to appear in person; and to plead, argue and do all necessary acts for conduct of proceedings. Similar applications were filed in two of the aforesaid civil suits, being I.A No. 1307 of 2011 in O.S. No. 104 of 1998 and I.A. No. 1306 of 2011 in O.S. No. 388 of 1997. The Trial Court, by its similar orders dated 19.02.2018, allowed the applications so moved and granted the prayer so made while rejecting the contentions urged on behalf of contesting respondent with reference to Order III Rule 2 CPC. The said order 19.02.2018, as passed in relation to O.S. No. 368 of 1995 reads as under: -

> "1. This petition is filed under Order 3 Rule 2 Section 151 CPC and Section 32 of Advocates Act, 1961 & Rule 32 and 33 of Civil Rules of practice in A.P. and Evidence Act Sect.120 praying to allow the petitioner to represent her husband the plaintiff in the above suit, before the Hon'ble Court to appear in person, to plead and to all acts necessary in the conduct of above proceedings.
>
> 2. The Petitioner who is the authorized GPA holder of the plaintiff in the suit, seeks permission of this Court, to permit her to represent the plaintiff in person. The Petitioner says that, as she is the wife of plaintiff she can protect the best interest of her husband, and as her husband is staying in a far away place and as he cannot attend the court in person she may be permitted to represent her husband in person to conduct the suit and she in support of her contentions relied upon a judgment reported in AIR 2003 A.P. 317, Sundar Raj Jaiswal and others vs. Smt.Vijaywa Jaiswal.

2 'CPC', for short.
3 'the Act of 1961', for short.

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3. Wherein it was held that, under Section 32 of the Advocate Act the court may permit appearance in a particular case permitting any person other than the Advocate and that, under the said provision a discretionary power was given to the court to permit appearance to any non-advocate for party. it was further held in the judgment that, the trial court granted permission for the Power of Attorney holder of the respondent and the said Power of Attorney has been helping the court by appearing for the respondent and there is no remark noticed by the court below. It is always open for the Court to Withdraw or cancel permission if the Power of Attorney holder is 'unworthy or reprehensible. Hence sought permission to allow her to represent her husband/plaintiff in the suit.

4. The objection of respondent was that as per Order 3 Rule 2 appearance may be in person or by recognized agent or by pleader, which is once again subject to the person knowledge of the transactions, but never empowers to argue on behalf of the executant, as such the above provisions are not correct for asking to plead in the court on behalf of plaintiff. He further opposed the petition stating that, the petitioner is not resident of Vijaywada, as such, it would be difficult for them to serve notice on the petitioner in case of any applications filed in the suit. Hence, opposed the petition.

5. However this court having considered the petition and counter averments opines that, when the petitioner was permitted by this court at the inception of the suit itself, to represent as GPA, now the permission is sought by her to represent her husband in person, instead of by a pleader. Moreover, she states to be the wife of the original plaintiff, who in the opinion of this court can protect the best interest of her spouse and as held by his lordship, in the above reported judgment that, the permission cannot be withdrawn at the instance of petitioners. More so, when there is nothing on record to show that, the GPA holder has created an unhealthy atmosphere on indiscipline situation or exchanged words.

6. So when the Hon'ble High Court held that, when once the permission so granted can be withdrawn, if the acts of GPA representing the party in person is in derogative to the interest of the original party, the petitioner herein being the wife of plaintiff, in the opinion of this court can be permitted to represent in person on behalf of her husband. With regard to the other objection of respondent that, service of notice on the petitioner in case of any applications filed, would be difficult as she does not reside at Vijayawada, as the petitioner at the time of arguments submitted that she will stay at Vijayawada, till the suit is disposed off, this court does not find any grounds to disallow her plea.

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7. Accordingly petition is allowed."

(emphasis supplied)

4.4. The aforesaid orders dated 19.02.2018 were challenged by the contesting respondent in the High Court. The High Court by its common order dated 20.04.2018 in CRP Nos. 1784, 2221 & 2366 of 2018, confirmed the orders of the Trial Court, but while clarifying that the wife of the appellant will appear in person as power agent of the appellant but not in her professional capacity as a lawyer. This order dated 20.04.2018 by the High Court reads as under: -

> "These three revisions arise out of the orders passed by the III Additional Senior Civil Judge, Vijayawada, allowing the applications filed by the 1st respondent herein under Order III Rule 2 of the Code of Civil Procedure read with Section 32 of the Advocates Act, 1961.
>
> 2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner and Smt. Hemalatha Suryadevara, the General Power Agent of the 1st respondent herein, who was the plaintiff in all the three suits.
>
> 3. The 1st respondent, who was the plaintiff in three different suits namely O.S.Nos.368 of 1995, 389 *(sic)* of 1997 and 104 of 1998, is the principal and his wife Smt. Suryadevara Hemalatha, is his power agent. It appears that the 1st respondent and the plaintiff was all along represented by the counsel before the Court below. One of the suits already got disposed of. The other two suits are now pending. Even in the disposed of suit, some applications have been filed.
>
> 4. In the meantime, the wife of the 1st respondent filed applications in all the three suits, under Order III Rule 2 of CPC for representing her husband and to appear in person, to plead and to conduct the above proceedings. These applications were allowed by the Court below, forcing the 1st defendant in two suits and the sole defendant in the third suit to come up with the above revisions.
>
> 5. The objections of the learned counsel for the petitioner to the orders impugned in these revisions are two fold namely (i) that the wife-cum-General Power Agent of the 1st respondent also happens to be a lawyer, but she can either appear as a counsel or as a power agent and not as both and (ii) that the address for

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service should be intimated by the 1st respondent in Vijayawada to enable the petitioners to serve notices and summons.

6. The power agent of the 1st respondent, who appeared in person before me, stated that she is not seeking to appear as an advocate for the 1st respondent but she is seeking to appear only as the power agent of the 1st respondent. There can be no objection to a party to a proceeding to appear through the power agent. Order III Rule 2 of CPC provides for the same and to that extent the order of the trial Court allowing the applications cannot be found fault with. Once an application under Order III Rule 2 CPC is allowed, the power agent has two options, first option is to appear in person as a power agent and the second option is to engage an advocate herself. Both cannot be combined in a single order and that is the objection of the learned counsel for the petitioner. That objection is sustainable in law.

8. But in so far as the second objection is concerned, if the 1st respondent is appearing only as a power agent of a party, the question of informing the local address for service does not arise. It is only when a lawyer is engaged, the question of furnishing a local address for service would arise.

Therefore, all the Civil Revision Petitions are disposed of confirming the orders of the trial Court and clarifying that Smt. Suryadevara Hemalatha, will appear in person as a power agent of the 1st respondent and will not appear in her professional capacity as a lawyer.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed."

(emphasis supplied)

4.5. Thereafter, another application of similar nature in relation to O.S. No. 445 of 1998 was considered and allowed by the Trial Court by its order dated 24.09.2018, while rejecting similar objection of the respondent and while observing as under: -

"The respondent opposed the petition stating that, as per Order 3 rule 2 CPC appearance maybe in person or by recognized agent or by a pleader, which is once again is subject to the personal knowledge of the transactions and it never empowers to argue on behalf of the executants, as such the provisions under which this petition is filed is not correct to seek permission to represent and plead on behalf of the plaintiff in the suit.

However, this court considering the petition and counter averments opines that, when GPA is executed in favour of the

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petitioner authorizing her to represent the plaintiff in the suit, and she as GPA also intends to plead on behalf of the plaintiff in the suit as she can protect the best interest of her husband, and when as per Sec.32 of Advocate Act any court or authority or person may permit any person, not enrolled as to advocate under Act, to appear before it, in any particular case, petitioner being the authorized agent of plaintiff in the suit, seeking permission to appear in person and conduct the suit on behalf of her husband seems reasonable.

Moreover, when the permission granted can be withdrawn by the Court, if the acts of GPA representing the party, in person in derogative to the interest of the original party. So, the petitioner being the wife of plaintiff in the suit seeking permission to represent in person on behalf of her husband seems justice and necessary. Hence, for the reasons stated above, I am inclined to allow the application. Accordingly, the petition in allowed."

(emphasis supplied)

4.6. The aforesaid order dated 24.09.2018 was challenged by the contesting respondent in the High Court in CRP No. 6924 of 2018. This petition was also dismissed by the High Court by its order dated 14.12.2018, which may also be usefully reproduced as under: -

"Aggrieved by an order passed by the trial Court permitting the 1st respondent to be represented by his wife as the General Power of Attorney holder, to act, to appear and to plead, the defendant in the suit has come up with the above revision.

2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner. The G.P.A. holder of the 1st respondent takes notice.

3. The 1st respondent herein has filed a suit in O.S.No.445 of 1998 for partition. It appears that the 1st respondent is a retired I.A.S. Officer and his wife who is General Power of Attorney holder is an Advocate enrolled in the Bar Council of Andhra Pradesh.

4. Therefore, the 1st respondent has appointed his own wife as General Power agent. This fact is not disputed.

5. When an attempt was made by the G.P.A. holder to act in dual capacity, both as a General Power of Attorney and as an advocate for her husband, this Court directed that she can only opt for one.

6. Therefore, the 1st respondent filed I.A.No.556 of 2018 seeking permission for the G.P.A. holder to plead, present and argue his case in person. This application has been allowed by the trial

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Court by an order dated 24-09-2018. It is against the said order that the revision has been filed.

7. The contention of Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner is that G.P.A. holder, having a personal interest, cannot plead on behalf of the party. Reliance is placed upon the clause contained in the deed of a General Power of Attorney.

8. But clauses 2 and 3 of the deed of General Power of Attorney authorises the G.P.A. holder to sign and verify plaints, written statements, affidavits etc., and also to appear in all courts. Therefore, the General Power of Attorney certainly authorises the holder to plead on behalf of the 1st respondent.

9. Merely because the wife happens to be a lawyer, there is no prohibition in law for her to plead the case of her husband by holding a general power. The bar for a lawyer to take a dual role, is in the context of conflict of interests, which correlate to ethical principles in respect of the profession. But when a lawyer's spouse is involved in litigation, there can be no bar for the lawyer to act as the power agent of the spouse, for doing whatever is authorised by the deed of General Power of Attorney to do.

10. Moreover, I do not know in what way the petitioner is aggrieved by such an act. If at all there are certain things only within the exclusive knowledge of the principal that can certainly be raised as a point. Therefore, I find no merits in the revision. Hence, the Civil Revision Petition is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed."

(emphasis supplied)

4.7. On the other hand, when the said proceedings were to progress further, the contesting respondent filed separate applications, this time contending that the wife of the appellant, who was representing him as GPA holder, was not entitled to examine the witnesses. The Trial Court, yet again, rejected the objection of the contesting respondent by its separate but substantially similar orders dated 07.02.2019. The order so passed by the Trial Court in relation to O.S. No. 368 of 1995 reads as under: -

"1. This petition is filed under Sec.151 CPC by the petitioner seeking the court to prevent the wife of the plaintiff who is

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representing the plaintiff in person, as his GPA from examining the witnesses.

2. The Petitioner says that, the 1st plaintiff in the suit is being represented by his wife as GPA holder from 1998 onwards, and as on the said date the suit was being represented by different counsel. The 1st respondent who came on record as GPA, of the plaintiff filed an application under Order 3 Rule 2 CPC seeking permission to represent the 1st plaintiff in person and the said application was allowed, against which this petitioner preferred CRP 1784/2018, which was disposed of on 20-4-2018, directing the GPA holder not to conduct the suit proceedings both in the capacity of an advocate as she is enrolled in bar, and as GPA. The petitioner says that, when the 1st respondent nowhere stated that, the GPA in her name was cancelled, and she was authorized to make personal appearance on behalf of the plaintiff, the respondent has to only engaged a counsel represent in her personal capacity. Hence, the 1st respondent cross examining the witnesses in person is against the orders of Hon'ble High Court in CRP 1784/2018. Hence, this petition to declare that the 1st respondent who is GPA holder is not authorized to participate in the cross examination of the witnesses.

3. The 1st respondent opposed the petition stating that, she as a GPA of her husband/plaintiff is appearing in person, after obtaining permission from this Court, and though she is enrolled in bar council, she is not appearing in her professional capacity, in this matter and thus she is appearing in person, as such, she is entitled to cross examine the witnesses and that petitioner cannot direct the plaintiff, as to how she has to conduct the case i.e., either through a counsel or in person. The Hon'ble High Court in CRP No.1784/2018 stated that the GPA holder cannot represent the court both as a GPA and in her professional capacity, but did not say that she cannot in her personal capacity conduct the suit proceedings. Hence, she being the GPA of her husband is competent to do the suit in person that includes the cross examination of witnesses.

4. Heard both sides.

5. Both the parties did not adduce any oral or documentary evidence.

"Whether the respondent cannot be permitted to participate in the examination of witnesses as prayed by the petitioner?"

POINT:

6. The Petitioner's objection for the 1st respondent to cross examine the witnesses herself is that, she being the GPA of the plaintiff can only engage a counsel but cannot participate in the trial and examine the witnesses or argue the matter. Though she was permitted to represent the suit proceedings in person, it does

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not confer her with the authority of doing any such acts, which a legal practitioner would do. But, the respondent says that, when she was permitted by this Court to conduct the suit proceedings as GPA of her husband- 1st plaintiff in person, it is for her to decided, whether she would continue the suit in person or engage any counsel to represent the suit proceedings and that this petitioner has no business to direct the respondent as to adopt to which course in the conduct of the suit proceedings.

7. The 1st respondent in support of her arguments has relied upon the following two judgments 1) Surender Raj Jaiswal and others vs. Vijaya Jaiswal, AIR 2003 AP 317; 2) Prabha P.Shenai vs. Ispat Industries Limited 2016 Law Suit (Bombay) 271. In the said judgment referred (1) above at paragraph No.13 his Lordship opined that

> I do not see any bonafides on the part of the petitioners to insist the respondent to prosecute either personally or appoint an Advocate. The respondent herself no doubt is empowered to prosecute the particular case but due to the relationship of herself with her husband and the acquaintance of the case, she reposed confidence fully in her husband and appointed him as her Power of Attorney to appear on her behalf in a particular case and, therefore, the application filed by the petitioners herein was rightly dismissed by the Court below. The Trial Court granted permission for the Power of Attorney Holder of the respondent and the said Power of Attorney has been helping the Court by appearing for the respondent and there is no remark noticed by the Court below. It is always open for the Court to withdraw or cancel permission if the Power of Attorney Holder is unworthy or reprehensible.

8. This Court considering the arguments submitted by either side and the principle held in the above referred judgments opines that, when once the respondent was permitted to represent the 1st plaintiff who is no other than her husband, in person opining that no person can protect the interest of the spouse, and act in the best interest of the spouse other than the wife/husband, herself/himself, permitted the respondent, who is the wife of 1st plaintiff, and also GPA to represent the suit proceedings in person and because she was permitted and representing the suit in person, now she wants to cross examine the witnesses also, by herself, as rightly put forth by the respondent what locus standi does the petitioner have in objecting the respondent, in cross examining the witnesses on behalf of the plaintiff, and her husband? when there is no bar for a party to cross examine the witnesses, the respondent who is representing the plaintiff as a GPA and permitted to represent in person intending to cross examine the witnesses by herself be curtailed? In fact the principle held under ref.(1) above judgment aptly applies to the case on hand, because in this case also, like in the above referred case, the GPA holder and the plaintiff are husband and wife, as such this

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court opines that, unless the court opines to withdraw or cancel the permission, if the power of attorney holder is found unworthy there can be no hindrance for the respondent to continue to represent the plaintiff in person.

9. As held in judgment in reference No.2 that-

> In the present case, considering the fact that the constituted attorney in the present case is not only the husband of the plaintiff but her predecessor in title, who actually carried out the work in question and to whom the amounts claimed in the suit were due before he assigned his entitlement to the plaintiff, there is a preeminent case for permitting him to represent the plaintiff and argue her case in this suit. I have according, permitted him to advance arguments for the plaintiff.

10. The said principle also is apt to the case on hand, as in this suit also the 1st respondent was permitted to represent the 1st plaintiff in person, so she can very well represent the 1st plaintiff and argue the case in this matter, and the petitioner cannot raise any objection with regard to the entitlement of the respondent, who was permitted to represent in person; with regard to the bar enshrined by his lordship in CRP 1784/18 that, the respondent being GPA holder cannot represent the matter in her professional capacity, when certainly the respondent is not representing the Court as an advocate, and she is representing the Court, as the wife of plaintiff who was permitted to represent the 1st plaintiff in person being his GPA holder and not as an advocate, she cannot be curtailed from cross examining the witnesses. Accordingly, this point is answered against the petitioner.

11. In the result, the petition is dismissed."

(emphasis supplied)

4.8. The aforesaid orders dated 07.02.2019 were challenged before the High Court in Civil Revision Petition Nos. 758, 759, 760 and 761 of 2019, which have been considered and decided by the impugned common order dated 28.06.2019.

4.8.1. In the impugned order dated 28.06.2019, the High Court, after taking note of the background aspects and stand of the respective parties, stated the point for determination in the following terms: -

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> "9. The short point that arises for consideration is "Whether the G.P.A. holder of the plaintiff can be permitted to act like a counsel and cross-examine the witnesses?"

4.8.2. Thereafter, the High Court took note of the previous applications moved in these matters and the orders passed thereupon, while stating its construction of such previous orders, *inter alia*, in the following terms:-

> "12. The said order came to be passed in the month of December, 2018. As stated above, earlier to this order, a common order was passed in C.R.P.Nos.1784, 2221 and 2366 of 2018, wherein, the applications filed under Order III Rule 2 of C.P.C., read with Section 32 of the Advocates Act were disposed of clarifying that Smt.S.Hemalatha will appear in-person as a power of agent to the first respondent and will not appear in her professional capacity. The said applications came to be filed under Order III Rule 2 of C.P.C., for the following relief, to represent her husband; to appear in person to plead and conduct the above proceedings.
>
> 13. The said applications were allowed by the Court below, forcing the first defendant to come up with the above three revisions. The objections of the learned counsel for the petitioner therein, were two fold, namely (i) that the wife-cum-General Power agent of first respondent also happens to be a lawyer, but she can either appear as a counsel or as a power agent and not as both and (ii) that the address for service should be intimated by the first respondent in Vijayawada to enable the petitioners to serve notices and summons. The Hon'ble High Court held that once an application under Order III Rule 2 CPC is allowed, the power agent has two options; the first option is to appear in person as a power agent and second option is to act as an Advocate herself. Both cannot be combined in a single order."

4.8.3. Thereafter, the High Court took note of the reasons that prevailed with the Trial Court in passing the impugned orders dated 07.02.2019, and proceeded to allow the revision petitions, essentially with reference to decision of the Division Bench of the High Court in the case of ***Madupu Harinarayana @ Haribabu rep. by his G.P.A., T. D. Dayal v. 1st Additional District Judge, Kadapa and Ors.***: 2011 (2) ALT 405 (D.B.) and Section 32 of the Act of 1961. The High Court expressed its views

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against participation of the wife of the appellant in the proceedings as GPA holder, while giving her liberty to conduct the case as an advocate and while observing as under: -

> "16. The Hon'ble Division Bench in the Judgment referred to above observed that any person approaching the court seeking some legal redressal has to scrupulously, and without exception, follow the procedural rules and regulations framed by the High Court. The rules made by the High Court, Civil Rules of Practice and Circular Orders and Criminal Rules of Practice and Circular Orders as well as various other procedural rules made under various statutes supplant the two codes. A party to the proceeding can either himself appear as a party in person to ventilate his grievance or engage an advocate enrolled on the rolls of the Bar Council of Andhra Pradesh (a statutory professional body constituted under the Advocates Act, 1961). A party to the proceedings may authorize another by giving a Power of Attorney to appear in the case, file affidavits, instruct lawyers and act on his behalf. It was held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an advocate enrolled on the rolls of the Bar council, appears in court, it is an offence punishable under law. Power of Attorney Act defines "power-of-Attorney" to include any instrument empowering a specified person to act for and in the name of the person executing it. If so empowered, the donor may execute any instrument or do anything in his own name and signature by the authority of the donor of the power. Section 4 of the POA Act casts an obligation on the POA to verify the affidavit, give a declaration or other sufficient proof of the POA, and to deposit the same in the High Court or the District Court within the local limits of whose jurisdiction the instrument may be. Order III C.P.C., deals with recognized agents and pleaders. Rule 1 thereof enables the recognized agent to make appearance, application or act in any court. Rule 2 explains recognized agents as "agents of parties by whom such appearances, applications and acts may be made or done". These are the persons holding POA authorizing them to make an application and act on behalf of such parties. Section 2(a) of the Advocates Act defines, "Advocate" to mean an advocate entered in any roll under the provisions of the said Act. Section 2(15) of the CPC defines "Pleader" to mean any person entitled to appear and plead for another in court.
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> *** *** ***
>
> 18. After referring to the provisions of Advocates Act and the Rules made by the High Court and the circulars issued, this Court in ***Madupu Harinarayana's case*** (supra) held that all the pleadings in the proceedings should be made by party in person as recognized agents. A party in person, and a recognized agent,

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have to make an appointment in writing (vakalatnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognized agent, who engaged the advocate. Section 32 of the Advocates Act empowers the Advocate to permit any non-advocate to appear in a particular case. This means that any person has to seek prior permission of the Court to argue the case if he is not Advocate enrolled under the Advocates Act.

19. From the above observations made, it is clear that Section 32 of the Advocates Act empowers the court to permit any non-advocate to appear in a particular case after seeking prior permission of the court to argue a case if he is not an Advocate. It would be appropriate to extract Section 32 of the Act which is as under:

> "32. **Power of Court to permit appearances in particular cases.**—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."

20. Prima-facie, a reading of the above provision vis-à-vis the law laid down by the Division Bench show that it is only the Advocate, who has enrolled under the provisions of the Advocates Act, has the right of practice in any court. Any violation of the same would amount to committing the offence under Section 35 of the Evidence Act.

21. In the instant case, the wife of the plaintiff, who is representing her husband, intends to examine the witness as a G.P.A. holder. She is not arguing the matter as an Advocate for the plaintiff nor she is cross-examining the witness as a lawyer for the first plaintiff, though she is a lawyer practicing in the said court.

22. Though the judgment in C.R.P.No.6924 of 2018 between the same parties held that there is no bar for the petitioner to participate in the trial, but the Division Bench judgment of this Court prohibits participation by the G.P.A. Holder. The same was not brought to the notice of the learned Judge. As observed by me earlier, the Division Bench of this Court categorically held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an Advocate enrolled on the rolls of the Bar Council, appears in the Court it is an offence punishable under law.

23. It may be true that the respondent herein, who is also an Advocate, is doing the case of her husband as a General Power of Attorney holder. It may also be true that the same may not cause

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much prejudice to the petitioners. But, in view of the judgment of the Division Bench of the combined High Court, C.R.Ps. are allowed, however, giving liberty to the respondent to conduct the case as an Advocate since she is a practicing Advocate as well.

24. There shall be no order as to costs. Miscellaneous Petitions pending if any in these revisions shall stand closed."

(emphasis supplied)

5. A long deal of arguments has been advanced before us in these appeals preferred against the order so passed by the High Court. It has been contended on behalf of the appellant that the High Court has totally misdirected itself and has failed to consider that the issue in question relating to the appearance of wife of the appellant as his GPA holder stood concluded in these proceedings by virtue of the previous orders of the High Court dated 20.04.2018 and 14.12.2018; and such an issue could not have been re-opened at all, for operation of the doctrine of *res judicata*. In the other limb of submissions, it has been argued on behalf of the appellant that the wife of the appellant has a right to conduct the legal proceedings as his GPA holder; and there is no explicit bar under any law which prevents the wife of the appellant to act as his GPA holder merely for her being an enrolled advocate. On the other hand, it has been contended on behalf of the contesting respondent that the previous orders between the parties granting permission to the wife of the appellant to conduct the cases do not attract the doctrine of *res judicata*, for having been passed in ignorance of the statutory directions in Section 32 of the Act of 1961. In the other segment, it has been argued on behalf of the contesting respondent that as an officer of the Court, an advocate

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cannot plead or cross-examine without filing a vakalatnama and the jurisprudence of this Court as also of the High Courts does not allow an advocate to appear as a power of attorney holder. Various authorities have been cited by the learned counsel for the parties in support of their respective contentions; we shall deal with the relevant of them at the appropriate juncture hereafter.

6. Having regard to the background aspects and the rival contentions, we may, first of all, take up the issue of *res judicata* before moving to any other issue raised in these appeals.

7. Learned counsel for the appellant has contended, with reference to various decisions including that in the case of ***Y.B. Patil & Ors. v. Y.L. Patil*: (1976) 4 SCC 66**, that the doctrine of *res judicata* is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings and hence, the concluded orders passed earlier in these proceedings are binding on the parties. The learned counsel has argued that the issue as regards conduct of the case by the wife of the appellant on his behalf and in her capacity as GPA holder has attained finality in these proceedings with the concluded orders dated 20.04.2018 and 14.12.2018 as passed by the High Court and such an issue cannot be reopened at the subsequent stage of these very proceedings. It has been contended, with reference to the several decisions, including that in the case of ***Gorie Gouri Naidu (Minor) v. Thandrothu Bodemma:* (1997) 2 SCC 552**, that even an erroneous decision, if rendered between

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the same parties, binds them if the same had been decided by a Court of competent jurisdiction. The learned counsel has also referred to the decision in ***Makhija Construction & Engg. (P) Ltd. v. Indore Development Authority*: (2005) 6 SCC 304** as regards the distinction between a precedent and the operation of the doctrine of *res judicata*, *and* to the decision in ***S. Nagaraj (Dead) by Lrs. & Ors. v. B.R. Vasudeva Murthy & Ors.*: (2010) 3 SCC 353** to submit that the orders as passed in this matter by the High Court on 20.04.2018 and 14.12.2018 cannot be ignored even on the principles of *per incuriam* because those principles have relevance to the doctrine of precedents but have no application to the doctrine of *res judicata*.

8. It has, however, been strenuously argued by the learned senior counsel for the contesting respondent that the said orders dated 20.04.2018 and 14.12.2018 cannot operate as *res judicata* because therein, the Court had misapplied the procedural law and had not taken into consideration the impact of Section 32 of the Act of 1961. In this regard, a 3-Judge Bench decision of this Court in the case of ***Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N. B. Jeejeebhoy*: (1970) 1 SCC 613** has been strongly relied upon. It has been contended that the principles in ***Mathura Prasad*** (supra) would apply to both the questions of jurisdiction as well as the situations where a decision of the Court sanctions something which is illegal. The learned counsel would submit that Section 32 of the Act of 1961 entitles only the non-advocates to seek

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permission of the Court to plead on behalf of any party and the same permission cannot be sought by an advocate. The contention has been that the previous orders of the High Court, having ignored the import and effect of Section 32 of the Act of 1961, do not operate as *res judicata* in the current proceedings. Another decision of this Court in the case of ***Allahabad Development Authority v. Nasiruzzaman & Ors.*: (1996) 6 SCC 424**, has also been cited to contend that this Court has clarified the law that where the consequence of giving effect to *res judicata* would be of enforcing an order standing contrary to statutory direction or prohibition, the doctrine of *res judicata* has no applicability.

9. The basic principles of *res judicata* are generally specified in the principal part of Section 11 of the Code of Civil Procedure, 1908 which reads as under:-

> "**11. *Res judicata*.** —No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

9.1. The doctrine of *res judicata*, having a very ancient history, embodies a rule of universal law and is a sum total of public policy reflected in various maxims like '*res judicata pro veritate occipitur*', which means that a judicial decision must be accepted as correct; and '*nemo debet bis vexari pro una et eadem causa*', which means that no man should be vexed twice for the same cause. The ancient history of this doctrine and its consistent recognition could well be underscored with

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reference to the following statement of law in the case of ***Sheoparsan Singh and Ors. v. Ramnandan Prasad Narayan Singh and Ors.:*** **A.I.R. 1916 Privy Council 78**:-

> "...But in view of the arguments addressed to them, their Lordships desire to emphasise that the rule of *res judicata*, while founded on ancient precedent, is dictated by a wisdom which is for all time.
>
> " 'It has been well said,' declared Lord Coke, '*interest reipublicoe ut sit finis litium*, otherwise great oppression might be done under colour and pretence of law'".-(6 Coke, 9A.)
>
> Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who escribes the plea thus: "If a person though defeated at law sue again he should be answered, 'You were defeated formerly. This is called the plea of former judgment." [See "The Mitakshara(Vyavahara)," Bk. II, ch. I, edited by J. R. Gharpure, p. 14, and "The Mayuka," Ch. I, sec. 1, p. 11 of Mandlik's edition.]
>
> And so the application of the rule by the Courts in India should be influenced by no technical consideration of form, but by matter of substance within the limits allowed by law."
>
> (emphasis supplied)

9.2. The contours of this doctrine of *res judicata* and its application could be taken into comprehension by a reference to the Constitution Bench decision of this Court in the case of ***Daryao and Ors. v. State of U.P. and Ors.:*** **AIR 1961 SC 1457**. In that case, after the writ petitions filed before the High Court of Allahabad under Article 226 of the Constitution of India were dismissed, the petitioners filed substantive petitions in this Court under Article 32 of the Constitution of India for the same relief and on the same grounds. In such petitions, this Court upheld the objection that the decision of the High Court would operate as *res judicata* while observing, *inter alia*, as under: -

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"(9) But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in S. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art. 32.

(10) In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading Duchess of Kingston's case, 2 Smith Lead Cas. 13th Ed. pp. 644, 645. Said Sir William B. Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose." As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation", Halsbury's Laws of England, 3rd Ed., Vol. 15, Paragraph 357, p. 185. Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p. 187, paragraph 362). "Res judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause — nemo debet bis vexari pro eadem causa", Corpus Juris, Vol. 34, p. 743...

(11) The same question can be considered from another point of view. If a judgment has been pronounced by a court of

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> competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., Vol. 22, p. 780, paragraph 1660.
>
> (emphasis supplied)

9.3. It is also equally relevant to reiterate that Section 11 CPC is not the foundation of the doctrine of *res judicata* but is merely the statutory recognition thereof and, hence, is not considered exhaustive of the general principles of law. This doctrine, it is recognised, is conceived in larger public interest and is founded on equity, justice and good conscience. These aspects were tersely put by this Court in the case of ***Lal Chand (dead) by L.Rs. and Ors. v. Radha Krishan*: (1977) 2 SCC 88** in the following words:-

> "19. ... The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to

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> an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue...."
>
> (emphasis supplied)

9.4. It hardly needs any over-emphasis that but for this doctrine of *res judicata*, the rights of the persons would remain entangled in endless confusion and the very foundation of maintaining the rule of law would be in jeopardy. Even if this doctrine carries some technical aspects, as explained by this Court in ***Daryao*** (supra), it is in the interest of public at large that a finality should attached to the binding decisions of the Courts of competent jurisdiction; and it is also in public interest that individual should not be vexed twice with the same kind of litigation. As noticed, the Constitution Bench has placed this doctrine on a high pedestal, treating it to be a part of rule of law.

9.5. Having taken into comprehension the object and framework of doctrine of *res judicata*, a few ancillary principles, relevant to the case at hand, may also be usefully noticed.

9.5.1. The principle that the doctrine of *res judicata* is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings is hardly of any doubt or dispute. A 3-Judge Bench of this Court in the case of ***Y.B. Patil*** (supra), has tersely underscored this principle of law in the following terms: -

> "4. ...It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an

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> order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding..."

9.5.2. It is also well-settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. In the case of ***Gorie Gouri Naidu*** (supra), this Court, *inter alia*, said,

> "4.....The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis...."

9.5.3. In ***Makhija Construction & Engg. (P) Ltd.*** (supra), this Court also clarified the distinction between a precedent and the operation of the doctrine of *res judicata* in the following terms:-

> "**19.** ...A precedent operates to bind in similar situations in a distinct case. *Res judicata* operates to bind parties to proceedings for no other reason, but that there should be an end to litigation."

9.5.4. In ***S. Nagaraj*** (supra), it was also made clear by this Court that binding decisions cannot be ignored even on the principles of *per incuriam* because those principles have relevance to the doctrine of precedents but have no application to the doctrine of *res judicata*.

10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of *res judicata* is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of *res judicata* is

attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of *per incuriam* because that principle applies to the precedents and not to the doctrine of *res judicata*.

10.1. In true application of these principles, it would appear that the orders passed in these matters by the High Court on 20.04.2018 and 14.12.2018, as regards the issue of participation of the wife of the appellant in these proceedings as a GPA holder of the appellant, remain binding on the parties and cannot be ignored. In other words, this issue concerning the capacity of the wife of the appellant to participate in these proceedings as his GPA holder cannot be agitated over again in these very proceedings, even if the earlier orders granting such permission to her are suggested to be erroneous.

11. However, learned senior counsel for the contesting respondent has strenuously argued, with reference to the decisions in ***Mathura Prasad*** and ***Allahabad Development Authority*** (supra), that the said orders dated 20.04.2018 and 14.12.2018 do not operate as *res judicata*. In view of the submissions made on behalf of the contesting respondent, we may examine the relevant features of the said cited cases in necessary details.

11.1. In the case of ***Mathura Prasad*** (supra), the appellant constructed buildings for commercial or residential purposes on open land in pursuance of lease granted by the respondent. His application to the Civil Judge for determination of standard rent was, however, dismissed on the ground that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 did not apply to open land leased for the construction of such buildings. A Single Judge of the Bombay High Court confirmed this order in a group of revision applications. However, in the case of ***Vinayak Gopal Limaye v. Laxman Kashinath Athavale*: ILR (1956) Bom 827**, the Bombay High Court decided that a building lease in an open plot was not excluded from Section 6(1) of the said Act of 1947. The view so taken by the Bombay High Court in ***Vinayak Gopal Limaye*** (supra) was affirmed by this Court in the case of *Mrs.* ***Dossibai N. B. Jeejeebhoy v. Hingoo Manohar Missa*: (1962) 3 SCR 928**. Relying upon this judgment, the appellant filed a fresh petition in the Court of Small Causes, Bombay for an order determining the standard rent since the area was located within the limits of Greater Bombay. The Trial Judge rejected this application essentially on the consideration that the matter had already been decided between the same parties in the earlier proceedings for fixation of rent. The High Court affirmed the order so passed and hence, the matter was in appeal before this Court.

11.1.1. In the aforesaid context, various features of the doctrine of *res judicata* were explained by this Court in the relied upon passage as follows:-

> "**11.** It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."
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> (emphasis supplied)

11.1.2. This Court held that in the given case, the earlier decision of the Civil Judge that he had no jurisdiction to entertain the application for determination of standard rent was plainly erroneous; and if such a decision was regarded as conclusive, *'it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the Legislature'*. Therefore, the operation of doctrine of *res judicata* was ruled out in that case.

11.2. In the case of ***Allahabad Development Authority*** (supra), the relevant aspects were that after a notification under Section 4(1) of the

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Land Acquisition Act, 1894 ('the Act of 1894') for acquiring a large extent of land for Transport Nagar Scheme, the enquiry under Section 5-A was dispensed with in exercise of power under Section 17(1-A), as amended by the Legislature of the State; and possession of land in question was taken on 02.11.1977, whereby the land stood vested in the State under Section 16 of the Act of 1894. However, the High Court passed an order declaring that the acquisition proceedings stood lapsed by operation of Section 11-A, which requires that after acquisition, an award must be made within a period of two years from the date of publication of declaration and if no award is made within that period, the entire proceeding for acquisition of land would lapse. The same question was examined by this Court in ***Satendra Prasad Jain v. State of U.P.*: (1993) 4 SCC 369** and ***Awadh Bihari Yadav v. State of Bihar*: (1995) 6 SCC 31**, where it was held that Section 11-A of the Act of 1894 would not apply to the cases of land acquisition under Section 17 where possession had already been taken and the land stood vested in the State. In the given context and while referring to a decision in the case of ***Municipal Committee v. State of Punjab*: (1969) 1 SCC 475,** this Court held as under:-

> "6. In view of the above ratio, it is seen that when the legislature has directed to act in a particular manner and the failure to act results in a consequence, the question is whether the previous order operates as res judicata or estoppel as against the persons in dispute. When the previous decision was found to be erroneous on its face, this Court held in the above judgment that it does not operate as res judicata. We respectfully follow the ratio therein. The principle of estoppel or res judicata does not apply where to give effect to them would be to counter some statutory direction or

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> prohibition. A statutory direction or prohibition cannot be overridden or defeated by a previous judgment between the parties. In view of the fact that land had already stood vested in the State free from all encumbrances, the question of divesting does not arise. After the vesting has taken place, the question of lapse of notification under Section 4(1) and the declaration under Section 6 would not arise. Considered from this perspective, original direction itself was erroneous and the later direction with regard to delivery of possession of the land, in consequence, was not valid in law....."
>
> (emphasis supplied)

11.3. Thus, in the case of ***Mathura Prasad*** (supra), this Court observed that when the earlier decision on the question of jurisdiction was erroneous, it could not be treated as conclusive, else it would assume a special status to rule of law applicable to the parties relating to the jurisdiction, in derogation of the rule declared by the legislature. In ***Allahabad Development Authority*** (supra), this Court was concerned with operation of the statutory direction and inapplicability of the provisions of lapsing of acquisition where possession was already taken and the land stood vested in the State. Simply put, in these cases, the doctrine of *res judicata* has been held inapplicable in relation to the question of jurisdiction and in relation to the question of statutory direction/prohibition.

12. The question in these appeals, therefore, is as to whether the previous orders in relation to these proceedings, as passed by the High Court on 20.04.2018 and 14.12.2018 between the same parties and dealing with the same issues relating to the capacity of the wife of the appellant in the present matters, could be said to be not conclusive and

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not operating as *res judicata* because of any question of jurisdiction or of statutory direction or prohibition.

13. What has been argued in this Court on behalf of the respondents is that Section 32 of the Act of 1961 bars the advocates from seeking permission of the Court and this provision entitles only the non-advocates to seek such permission to plead on behalf of any party. According to learned counsel of the respondents, this provision has been ignored in the previous decisions.

13.1. Section 32 of the Act of 1961 reads as under: -

> **"32. Power of Court to permit appearances in particular cases.** —Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."

14. We are unable to appreciate the contention which suggests that the said Section 32 creates a bar for the wife of the appellant to seek permission of the Court to appear on behalf of her husband in her capacity as GPA holder because of she being an enrolled advocate. The enabling provision of Section 32 of the Act of 1961, whereby any Court, authority or person may permit any non-advocate to appear before it or him in any particular case is difficult to be read as creating a corresponding bar in giving permission to a GPA holder of a party to represent that party as such, if the said GPA holder, during pendency of the proceedings in the Court, gets enrolled as an advocate. In other words, there does not appear any statutory prohibition operating in the situation like that of present case, for which the existing GPA holder of a

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party cannot be given permission to appear only as the GPA holder, even if he/she has been enrolled as an advocate.

14.1. As noticed, the meaning, purport and effect of the previous concluded orders of the High Court dated 20.04.2018 and 14.12.2018 had been clear and unambiguous that in these cases, wife of the appellant would be entitled to appear only as the GPA holder and not as an advocate. We are unable to accept the submissions made on behalf of the contesting respondent that the said orders by the High Court stand at conflict with any statutory bar or prohibition or they relate to any such mandatory provision of law which is going to be violated.

14.2. Apart from the above, we are clearly of the view that even if it be assumed for the sake of arguments that there had been any error in the previous orders dated 20.04.2018 and 14.12.2018, those orders, having been rendered between the same parties and on the same issue of appearance of the GPA holder in the same proceedings, indeed operate as *res judicata*.

14.3. In the peculiar facts and circumstances of the present case, where the only fortuitous event had been that wife of the appellant, who was already acting as his General Power of Attorney holder, later on took the degree in law and got herself enrolled as an advocate, the High Court had, in the previous rounds of proceedings, cautiously balanced the requirements of law, particularly the requirements of CPC, the Civil Rules of Practice in the State, and the Act of 1961 as also the rules made under

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the Act of 1961 by specifically providing that wife of the appellant shall appear only as his GPA holder and not as an advocate. No such question like that of jurisdiction or statutory prohibition arises from the said orders dated 20.04.2018 and 14.12.2018 for which, the issue concluded thereby could be reagitated at the subsequent stage of these very proceedings by suggesting different interpretations.

15. At this juncture, we may also deal with the reason that has prevailed with the High Court in the order impugned.

15.1. As noticed, the High Court has chosen to brush aside the said previous orders dated 20.04.2018 and 14.12.2018 by reproducing a couple of paragraphs of the Division Bench decision of that High Court in the case of ***Madupu Harinarayana*** (supra) and by holding that by virtue of the said decision, the GPA holder cannot plead or argue for his principal. The High Court has reproduced the following two passages of the said decision in ***Madupu Harinarayana***:

> "28. A conspectus of Rules 1 and 2 of Order III of Code of Civil Procedure, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, Rule 2 of Section 34 Rules and Code of Criminal Procedure would show that all the pleadings in a proceeding shall be made by the party in person, or by his recognized agent. A party in person, and a recognized agent, have to make an appointment in writing (vakaltnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognized agnet, who engaged the advocate. Sections 29 and 30 of the Advocates Act make it clear that advocates are the only recognized class of persons entitled to practise law, and such an advocate should have been enrolled as such under the Advocates Act. Section 32 of the Advocates Act empowers the court to permit any non-advocate to appear in a particular case. This only means

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that any person has to seek prior permission of the Court to argue a case if he is not an advocate enrolled under the Advocates Act. Further, it is an offence for a non-advocate to practice under the provisions of the Advocates Act. Section 45 prescribes a sentence of six months imprisonment.

31. The statutes and precedents are clear on the point. It is only advocates, whose names are entered on the rolls of the state Bar Council, who have the right to practice in any Court. If a person practices in any Court without any such authority, and without such an enrolment, it would be committing an offence under Section 45 of the Advocates Act punishable with imprisonment for a term which may extend to six months. Therefore the GPA Sri T.D.Dayal is not entitled to appear and argue for the Appellant. He has no right of audience in this case or any other case."

15.2. With respect, we are unable to endorse the approach of the High Court in this matter, particularly when reliance has been placed on the decision in the case of ***Madupu Harinarayana*** (supra) without taking note of the basic facts and the background aspects in which the said decision was rendered by the Court. The appellant of the said matter had filed a suit for specific performance which was dismissed by the Trial Court. The decree of the Trial Court was affirmed by the High Court and then, even the petitions seeking leave to appeal were dismissed by this Court. Until that juncture, the appellant was being represented by a duly instructed counsel, an enrolled advocate. Thereafter, the appellant filed a writ petition under Article 32 of the Constitution of India in this Court. It was lodged under Order XVIII Rule 5 of the Supreme Court Rules, 1966 because no reasonable cause was made out justifying the receipt of the writ petition. Then, IAs were filed by way of appeal against the Registrar's order, which were also dismissed. In these cases, before this Court, one Mr. T.D. Dayal represented the appellant as his alleged GPA holder, who

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also addressed certain communications to the Registry of the Court that were also duly replied. Thereafter, a writ petition was filed in the High Court and an affidavit in support thereof was filed by the alleged GPA holder wherein, apart from the criticism of the judgment of the Trial Court, even unfounded and unsubstantiated aspersions were sought to be cast on the High Court and on this Court. The said writ petition was dismissed by the Single Judge of the High Court and then, the matter was before the Division Bench in appeal. The appeal was also conducted by the said alleged GPA holder. The Division Bench noticed several features of the questionable dealings of the alleged GPA holder and it was also noticed that even the copy of GPA was not annexed to the writ petition or the writ appeal. The High Court found it to be a vexatious litigation by an interloper and being a gross abuse of the process of Court while observing at the very beginning of the judgment as follows:-

> "2. After giving a very patient hearing to *Mr. T.D. Dayal*, and perusing various provisions of the Advocates Act, 1961 as well as the decisions of the Supreme Court and of this Court in which he himself figured either as a social activist or a GPA for parties to the proceedings in the writ petitions, we are convinced that this is vexatious litigation. This is yet another instance of busybodies and meddlesome interlopers resorting to filing frivolous cases before the highest Court of the State due to perceived injustice to the community, or to the cause of a few gullible individuals whom they represent....."

15.3. The High Court also issued a slew of directions, including that of debarring the said alleged GPA holder from taking up any proceedings in the Court and also registering *Suo Motu* Contempt case for making unfounded and scurrilous remarks. We need not go into all those details

for the purpose of the present case; suffice it to observe that the said decision proceeded on its own peculiar facts and there had been a marked distinction of the points arising in the said case from the point arising before the High Court in the present case. In ***Madupu Harinarayana*** (supra), the point for determination was as to whether a GPA holder, who was not enrolled as an advocate, was having a right to appear and plead before the Court, particularly when he has been found to be involved in filing frivolous cases and making reckless remarks against the entire justice delivery system. In contrast, the point for determination in the present case before the High Court was as to whether the wife of the appellant, being his GPA holder and having been permitted to appear as such despite having been enrolled as an advocate during the pendency of proceedings, was not entitled to cross-examine the witnesses. The said decision in ***Madupu Harinarayana***, in any case, could not have been pressed into service to override the concluded and binding decisions between the same parties in the same proceedings at a previous stage.

16. For what has been discussed hereinabove, we are of the view that the aforesaid orders dated 20.04.2018 and 14.12.2018 operate as *res judicata* and create a bar in raising of the issue again as regards capacity of the wife of the appellant in these matters. The High Court has fallen in grave error in ignoring the said previous *inter partes* binding decisions.

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17. In continuity with what has been observed hereinabove, we are impelled to observe, as has rightly been contended on behalf of the appellant, that in the order impugned, the High Court has mischaracterised the issue before it. As noticed, the High Court has proceeded to observe that the point for determination in the matter was as to *'whether the GPA holder of the plaintiff can be permitted to act like a counsel and cross-examine witnesses'*. It has been pointed out on behalf of the plaintiff-appellant that his GPA holder (wife) never attempted to act like an advocate and to cross-examine the witnesses in that capacity. In the earlier rounds of proceedings, the High Court had specifically ordered that the wife of the appellant would only act as power agent of appellant and not in her professional capacity as an advocate. In view of the above and in view of the objections thereafter raised by the contesting respondent, the point for determination, in essence, before the Court was as to whether the wife of the appellant, being his GPA holder, was not entitled to cross-examine the witnesses, as captured by the Trial Court in paragraph 5 of its order dated 07.02.2019. The Trial Court had also noticed the objections of the contesting respondent that the wife of the appellant, being a GPA holder, could only engage a lawyer but could not participate in the Trial Court and examine the witnesses or argue the matter. It was contended that though she was permitted to attend the suit proceedings in-person, it did not confer her with the authority of doing any such act which only a legal practitioner would do. The Trial Court had

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rightly overruled such objections, particularly with reference to the previous orders passed by the High Court.

17.1. Moreover, the errors on the part of the High Court in this case are not confined to the erroneous framing of the point for determination and erroneous application of the decision in ***Madupu Harinarayana*** (supra). In fact, reference to the previous orders dated 20.04.2018 and 14.12.2018 by the High Court in the background narrative had also been incomplete and rather incorrect. It is noticed that in paragraph 13 of the order impugned, the High Court read as if the previous orders dated 20.04.2018 and 14.12.2018 stopped at observing that the two capacities, of GPA holder and advocate, cannot be combined. However, further to that, in the said orders dated 20.04.2018 and 14.12.2018, the High Court had precisely noticed that the wife of the appellant was appearing only as a power agent and the orders of the Trial Court were confirmed while clarifying that she would appear in-person as a power agent and will not appear in her professional capacity. This later part of the substance of the both the orders dated 20.04.2018 and 14.12.2018 appears to have not gone into the requisite consideration of the High Court.

18. Thus, it is apparent that the High Court has viewed the entire case from an altogether wrong angle, i.e., by misdirecting itself on the real point for determination; by not taking into comprehension the meaning, purport and effect of the previous binding orders dated 20.04.2018 and 14.12.2018 between the same parties in the same proceedings; and by

misapplication of the Division Bench decision of the same High Court. This misdirected approach has resulted in the High Court ignoring the doctrine of *res judicata* and issuing such directions which are squarely opposite to the directions contained in the previous binding orders.

19. For what has been discussed and held hereinabove, the impugned order dated 28.06.2019 cannot sustain itself and is required to be set aside.

20. The discussion until this juncture is itself sufficient to conclude this matter. However, before closing, we may refer to a few other features of the case.

20.1. A long deal of arguments has been made on behalf of the respondents in this case on the point that as an officer of the Court, an advocate cannot plead or cross-examine without Vakalatnama; and as regards the impact of Bar Council Rules, particularly on the standards of professional conduct and etiquettes. Several decisions have been cited to submit that the jurisprudence of this Court and the High Court does not allow advocates to appear as Power of Attorney holders. In our view, all such contentions remain entirely inapposite to the facts of the present case for the simple reason that the matter in issue stands concluded by the previous decisions by the Trial Court and then by the High Court. We are unable to find the said decisions operating in any manner against statutory mandate. Various contentions that the wife of the appellant being an advocate is likely to face the position of conflict of interest and

her disability to act as an advocate in the matter in which she is likely to have direct pecuniary interest, are all rather unnecessary when viewed in the light of facts that as per the binding orders passed in these cases, wife of the appellant would be appearing only as GPA holder and not as an advocate.

20.2. In view of the above, we need not dilate on the other contentions urged on behalf of the contesting respondent and counter thereto by the learned counsel for the appellant. However, we may take note of an apprehension suggested in the submissions made on behalf of the respondent that if the operation of Section 32 of the Act of 1961 is not confined to non-advocates, it may additionally create scope for unscrupulous advocates, who might have been suspended from practice or might be engaged in other malpractices as per the Bar Council of India Rules, to circumvent the legal consequences by appearing as power of attorney holders. This line of submissions is rather unnecessary and overexpansive; and it does not correlate with the real matter in issue before us. However, we may observe that the permission under Section 32 of the Act of 1961, by its very nature, is to be granted on case-to-case basis and could also be refused with reference to the given set of facts and circumstances referable to a particular case and any particular person. In any case, for all the features and factors of the present case, this line of submissions carries no relevance and does not require any further comment.

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21. For what has been discussed hereinabove, these appeals succeed and are allowed; the impugned common order dated 28.06.2019 is set aside; and the orders passed by the Trial Court dated 07.02.2019 are restored.

21.1. The costs of this litigation in this Court shall follow the decision in the main proceedings by the Trial Court.

.....J.
(DINESH MAHESHWARI)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI;
OCTOBER 19, 2022.

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2023 SCC OnLine SC 316

In the Supreme Court of India

(BEFORE S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.)

Civil Appeal No(s). 5328-5329 of 2016

Shramjeevi Cooperative Housing Society Ltd. ... Appellant(s);

Versus

Dinesh Joshi and Others ... Respondent(s).

With

Civil Appeal No. 1877 of 2023

(@ Special Leave Petition (Civil) No(s). 12945 of 2019)

Civil Appeal No(s). 409-410 of 2021

Civil Appeal No(s). 407-408 of 2021

Civil Appeal No(s). 2370-2371 of 2021

Civil Appeal No(s). 10239 of 2018

Civil Appeal No(s). 5328-5329 of 2016; Civil Appeal No. 1877 of 2023 (@ Special Leave Petition (Civil) No(s). 12945 of 2019); Civil Appeal No(s). 409-410 of 2021; Civil Appeal No(s). 407-408 of 2021; Civil Appeal No(s). 2370-2371 of 2021; and Civil Appeal No (s). 10239 of 2018

Decided on March 22, 2023

Advocates who appeared in this case:

For Appellant(s) Mr. Sumeer Sodhi, AOR

Mr. Prannoy Joe Sebastian, Adv.

Mr. Brijender Chahar, Sr. Adv.

Mr. Pulkit Agarwal, AOR

Mr. A.N.S. Nadkarni, Sr. Adv.

Mr. P.C. Sen, Sr. Adv.

Mr. Azmat Hayat Amanullah, AOR

Ms. Pragati Neekhra, AOR

Mr. Ajay Asuudani, Adv.

Ms. Meenakshi Arora, Sr. Adv.

Mr. Himanshu Shekhar Tripathi, AOR

Mr. Ambuj Dixit, Adv.

Mr. Arijit Prasad, Sr. Adv.

Mr. Raj Bahadur, AOR

For Respondent(s) Mr. P.V. Yogeshwaran, A.A.G.

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Mr. Aakash Nandolia, Adv.
Mr. Mrinal Gopal Elker, AOR
Mr. Sunny Choudhary, AOR
Mr. Nishan Awanat, Adv.
Mr. Nishant Awana, Adv.
Mr. Yasharth Kant, AOR
Mr. Rahul Kaushik, AOR
Mr. Arjun Garg, AOR
Ms. Ankita Chaudhary, D.A.G.
Mr. Gopal Jha, AOR
Mr. Raghvendra Shukla, Adv.
Mr. Shreyash Bhardwaj, Adv.
Mr. Mishra Saurabh, AOR
Mr. Brijender Chahar, Sr. Adv.
Mr. Ashutosh Kumar, Adv.
Mr. Palav Agarwal, Adv.
Mr. Sudhanshu Kaushesh, Adv.
Mr. Aditya Mishra, Adv.
Mr. Pulkit Agarwal, AOR
Mr. P.V. Yogeshwaran, A.A.G.
Mr. Pashupathi Nath Razdan, AOR
Mr. Vikas Bansal, Adv.
Mr. Astik Gupta, Adv.
Mr. Mohit D. Ram, AOR
Mr. Rajul Shrivastav, Adv.
Ms. Monisha Handa, Adv.
Mr. Anubhav Sharma, Adv.
Mr. K. Krishna Kumar, AOR
Mr. Pai Amit, AOR
Ms. Pankhuri Bhardwaj, Adv.
Mr. Abhiyudaya Vats, Adv.
Ms. Komal Mundhra, Adv.
Mr. Saurabh Agrawal, Adv.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.:— Special leave granted in SLP (C) No. 12945/2018. In all these appeals, all respondents were served and had entered appearance. The original applicant before the National Green Tribunal (hereafter 'NGT') too had been served; an affidavit was filed on his behalf. He was however, not represented on the date of hearing. With consent of counsel for the parties, all appeals were heard finally.

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2. These appeals, under Section 22 of the National Green Tribunal Act, 2010 (hereafter 'NGT Act') and appeals by special leave[1], question various orders[2] of the National Green Tribunal which directed that the Nagar Palika Parishad, Mandsaur (hereafter 'Parishad'), should desist from granting sanction to develop and construct properties in the vicinity of the "*Teliya Talab*" (hereafter '*talab*'), a man-made lake or reservoir in the city of Mandsaur.

3. The original applicant, Dinesh Joshi, preferred an application before the Central Bench of NGT, seeking directions for protection and conservation of the *talab*, alleging that construction permissions had been granted by the authorities, i.e., the Parishad and the State, to various private parties, and allowed construction upon a water body, resulting in depletion of the lake's area, thus reducing availability of surface water. It was also further alleged that untreated domestic waste and industrial effluents were being discharged or dumped into the *talab*. The Parishad and the Town and Country Planning Department (hereafter 'TCD') filed replies, upon being issued notices.

4. The NGT, by its order dated 17.02.2016 (referred to hereafter as 'the main order') took note of the Parishad's reply, as well as that of the TCD and relied on a 'revenue trace map' to say that the "Maximum Water Line" (hereafter 'MWL') had been shown and the land over which construction permission was given, i.e., Khasra. No. 1238, fell within the "Full Water Line" (hereafter 'FWL') as well as the MWL. It was observed that if the water was allowed to reach the maximum level, the lands would be submerged, as according to the NGT, they fell within the catchment area.

5. The appellants (except the appellant in the appeal by special leave) preferred review petitions, pointing to the fact that they had been given permission by the Parishad much earlier, and also drawing to the notice of the NGT that a Development Plan had been finally sanctioned in 2003, in terms of which a green area abutted the *talab*, beyond which a public road had been sanctioned and built, and further that their lands lay beyond this road. It was argued that in these circumstances, the NGT should review its order, as they were not heard before the main order was made.

6. The appellant in C.A. No. 5328-29/2016 (hereafter called 'the society') additionally urged that the lands owned by it were allotted a long time earlier to it, and that its use for construction of residential units to its members (who were workers, belonging to the poorer segments of society) became a subject matter of a previous litigation, whereby the state authorities had cancelled the conversion certificate, on the ground that the lands fell in the submergence area. The society filed a suit, which was decreed by the trial court[3]; the state's appeal was dismissed[4] and its second appeal before the Madhya Pradesh High

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Court, met the same fate, i.e., dismissal[5]. It was also pointed out that the special leave petition filed by the State too, was dismissed[6] by this court.

7. The NGT, however, dismissed all the review petitions before it, by the impugned orders. On the basis of certain representations and letters, the Collector, District Mandsaur constituted a committee of seven officials from the revenue department for the purposes of investigating and submitting the latest report with respect to the boundaries of the *talab*. Based upon the report received, the Collector issued an order on 06.06.2017. The material portion of that order reads as follows:

> *"the aforesaid investigation team got the demarcation done vide the Land Record District Mandsaur Letter Number 1316/MP/2016 dated 18-05-2016 and from team comprising 21 officers/employees on 04-06-2016 and 06-06-2016 and punching, report and map were submitted. As per the Panchnama, and Report and for clarifying of the facts/removal of errors mentioned in the application concerned with the Applicant regarding MWL of Telia Talab, situated at Kaba Mandsaur the Demarcation team notified the MWL limits of Telia talab to the employees of Municipal Council and Water Resources at the spot and permanent boundary signs were established, which are mentioned in the map with Green ink. After MWL signs, the colonies are not in submerged area. The survey numbers mentioned above the green ink of the map are recognised beyond the limits of MWL. After marking MWL signs, the permission of construction can be granted.*
>
> *I examined the case and minutely perused the aforesaid investigation report, Panchnama, and map submitted by the Committee constituted by this Court. Being consented (sic satisfied) with the report of investigation team and as per the Mandsaur Development Scheme 2001, the MWL. (Maximum Water Level) Limit signs which are mentioned in Green ink and the demarcation map of MWL limits of Telia Talab in the report of Investigation Team, as the colonies situated outside the Signs are not submerged and hence, construction permission can be given to the colonies situated outside the signs. This map shall be a part of this order."*

8. The report submitted to the Collector and order made by him became the subject matter of controversy before the NGT. An application (No. 17/2018), objecting to the correction of the submergence area and the MWL, was filed by the applicant who moved the earlier O.A. No. 100/2015. The applicant's grievance was that the NGT had prohibited any construction in the water bound area and within limits of the MWL and FWL of the *talab*. The argument made out was that the map prepared subsequently and taken on record by the

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Collector's order dated 06.06.2017, could not be sustained. The Madhya Pradesh Pollution Control Board in its reply stated that the alteration of the boundaries of the *talab* did not fall within its jurisdiction. It was stated, however, that the Board had issued notice to the Parishad from time to time to comply with provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereafter 'Water Act'). This was recorded by the NGT in its order. It was further recorded that the Collector's team had inspected the area and found that 10 colonies were existing within 3 kilometres from the *talab*, and further that untreated sewage water was being discharged in it. By its order dated 21.09.2020 (hereafter 'second order') the NGT severely chastised the State, the Parishad, and district revenue authorities, and directed them to immediately proceed to demarcate the water body and the area which was previously within the area of the water body, to ensure that it was not reduced in any manner. The NGT also prohibited grant of permission for construction without the demarcation of the area of the water bodies, and up to the MWL. It further directed that the entire Khasra No. 1238 should be protected and that the water body should not be disturbed.

Contentions of counsel for the parties

9. Ms. Meenakshi Arora, learned senior counsel appearing for the society, argued that the NGT's impugned orders are erroneous on two counts. Firstly, that it did not consider or deal with the fact that the portions of Khasra No. 1238 was purchased by the society over four decades ago, with the hard-earned money of its members, who were lowly paid workers. They had faced litigation for over two and a half decades, when the conversion certificate issued to them, was cancelled on the ground that the lands fell within the submergence area (*Doobkshetra*). The society was constrained to file a suit for perpetual injunction, where the state was impleaded; the state relied on the deposition of an engineer from its irrigation department, who reiterated its stand. However, he was unable to point to any document or material in support of the state's argument that the land fell within the submergence area. The state's appeal was rejected; the first appellate court noted the state's stand, which was contradictory, i.e., that the lands fell in the submergence area, and at the same time, that they were required for some construction. The state's second appeal, and special leave petition were also rejected.

10. Ms. Arora urged, as the second limb of her submissions, that the doctrine of finality of judgment and *res judicata* applied to the facts of this case. The principle plays a vital role as it is based on a sound firm principle of public policy. The doctrine of finality has evolved with the objective of preventing unnecessary litigation under the colour and pretence of law. It also ensures an end to litigation, in public interest.

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The state, and all its agencies were bound by the decree of the courts, which had been confirmed up to this court. Learned counsel submitted that the order dismissing the special leave petition also held that the judgment of the High Court was justified.

11. Mr. A.N.S. Nadkarni and Mr. P.C. Sen, learned senior counsels, Mr. Sumeer Sodhi, Ms. Pragati Neekhra, Mr. Amit Pai, and other counsel, appeared for other appellants. Mr. Brijendra Chahar, learned senior counsel, and Mr. Yogeshwaran, learned Additional Advocate General (AAG) for Madhya Pradesh, appeared for the TCD and the Parishad respectively; and Mr. Saurabh Mishra, AAG, appeared for the state of Madhya Pradesh. They supported the submissions on behalf of the society, and urged that the NGT fell into serious error in not considering that the TCD had published the Development/Master Plan in 2001, which was finally approved on 12.05.2003. This forms the basis for development of Mandsaur. The existence of the *talab*, its boundaries, and the extent of its catchment area, were made known. No one objected to the plan, which designated a green area immediately adjoining the *talab*, after which a road was permitted. The development of residences and colonies was beyond this road. These facts were known to the general public. In this background, the applicant before the NGT persuaded it to issue orders based on a "trace" map, which had not been finalised.

12. Learned counsel submitted that after much inter-departmental correspondence between the Sub-Divisional Officer of Mandsaur, the Parishad and the Water Resources Department, as well as the Collector, finally a letter was addressed by the Sub-Divisional Officer, to the Collector, on 31.01.2022, which disclosed that the map shown to the NGT, based on which, it made its orders was

> *"not originally a map, but a proposed map to depict a situation if the FTL of Teliya Talab were to be increased by one feet and which only bore the signature of Shri. L.N. Badgotia, the Sub-Divisional Officer of the Water Resources Department. This Map does not bear the signatures of any authorized Revenue Officer. The Map that was presented by Shri Santosh Rathore along with his request letter is in two pages and describes all categories of land under the submergence area and which was presented to the then collector on 03.07.2021 and the factual description was presented to the then Collector. The then Collector then put the issue up for discussion but he was transferred and because of which the discussion could not take place.*
>
> *On the basis of the various communications exchanged between the Chief Municipal Officer, Nagar Palika Mandsaur, and the Water Resources Department, what emerges clearly is that Map presented by Nagar Palika Parishad before the Hon'ble National Green Tribunal*

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(NGT) which was singed by Shri. L.N. Badgotia, Sub Divisional Officer, of the Water Resources Department, is not the original Map but only is descriptive of the proposal in the year 2002 to increase the height of the dam by one feet. The Map presented to me on 30.07.2021 by the Water Resources Department bears the signatures of the Sub-Engineer, Water Resources Department, Tehsildar, Revenue Inspector and Halka Patwari and this Map also has a clear description of all of the areas that will come under the FTL and MWL and hence this is the original map."

13. It is pointed out that the relevant correspondence between the various authorities and bodies, relating to the map furnished to the NGT, and its accuracy, as well as the instructions issued on it, have been placed on record by affidavit dated 01.11.2022, sworn to by the Chief Officer of the Parishad.

14. Learned counsel also submit that the very same issue, about the boundaries of the *Teliya Talab* is again the subject matter of another litigation before the NGT (i.e., *Abhay Kumar Akolkar* v. *State of MP*, O.A. No. 70/2022) in which the tribunal is cognizant of the present appeals.

15. The contesting respondents (applicants in the original applications before NGT), i.e., Mr. Dinesh Joshi and Mr. Alok Sharma, were not represented at the time of hearing. However, they had filed replies and counter affidavits to some of the appeals. Their consistent stand is that the NGT's orders do not call for interference. It is urged by them, the map of 1973-1974, relied on by the NGT, was supplied by the Parishad, which cannot now resile from its stand. It is also stated that the existence of the Development Plan, was a matter of record, and the NGT was aware of it. Moreover, it is pointed out that the Parishad did not deny that untreated waste was being dumped into the *talab*.

Analysis and Conclusions

16. A plain reading of the main order by the NGT shows that it went by the pleadings, and proceeded to pass orders on the basis of the trace map produced before it. The NGT was aware that the applicant wished to interdict development in the vicinity of the *talab*, for which sanction had been granted. Yet, it did not feel the necessity of seeking particulars from the parties before it, and whether any parties were likely to be affected by its orders. As a judicial tribunal, bound by principles of natural justice, it ought to have impleaded, or at least issued a public notice, about the pendency of litigation, and sought intervention of those likely to be adversely affected. Its omission to take this step, has resulted in prejudice to all the appellants before this court, who were faced with drastic and serious consequences, because the sanction for development or construction upon the lands owned, purchased or developed by them, immediately became out of bounds.

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17. Section 19 of the NGT Act pertinently provides as follows:

"19. Procedure and powers of Tribunal—(1) The Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

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

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Evidence Act, 1872 (1 of 1872).

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Civil Procedure Code, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely—

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

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

(f) reviewing its decision;

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

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

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

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

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Criminal Procedure Code, 1973 (2 of 1974)."

18. A plain reading of Section 19 clarifies that though not bound by the Code of Civil Procedure, the NGT is nevertheless bound by

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principles of natural justice. It is a judicial tribunal, exclusively tasked with the duty of deciding environmental disputes and causes; its remit includes wide ranging powers. In these circumstances, the NGT had to take into consideration that the nature of its directions meant that all those living or owning land near the *talab*, who had obtained sanctions from the Parishad and the TCD, were condemned unheard.

19. The second aspect is that when some of the appellants approached NGT, in review proceedings, those review petitions were summarily rejected. Again, these orders cannot be sustained, because they do not disclose any application of mind to the existence of the Development Plan, which had permitted development of the disputed areas; the orders in review also do not advert to or deal with the peculiar circumstances, concerning the society's plot, on which a previous litigation had been fought, ending in a decree against the state. Before this court, the Parishad has categorically deposed, and produced several documents, in support of its stand that the map placed before, and considered by the NGT, was only a draft, or proposal to increase the area of the *talab*.

20. It is too well settled that parties are bound by the principle of finality, which results in a decree by a competent court, acquiring a final and binding nature, especially where it is confirmed concurrently and upheld by the highest court of the land. In *Pradeep Kumar Maskara* v. *State of West Bengal*[2] this aspect was stated, in the following terms:

> "*24. At the very outset, we are of the view that the Tribunal has no jurisdiction to differ with the decision given by the Calcutta High Court in the writ petition filed by the appellants. The Tribunal further committed grave error in following the decision in* Ganga Dhar Singh case [Ganga Dhar Singh *v.* State of W.B., *(1997) 2 CHN 140] treating it to be a Division Bench judgment of the Calcutta High Court when as a matter of fact the decision in* Ganga Dhar Singh case [Ganga Dhar Singh *v.* State of W.B., *(1997) 2 CHN 140] was decided by a Single Judge of the High Court. Even the judgment passed* [Pradip Kumar Maskara *v.* State of W.B., *Civil Revision No. 3465 (W) of 1984, decided on 8-11-1992 (Cal)]] in the appellant's writ petition filed in 1984 was neither considered nor distinguished.*
>
> *25. In the background of these facts, in our considered opinion, when the judgment rendered by the Calcutta High Court in the case of the appellants and the said decision having not been quashed or set aside by a larger Bench of the High Court or by this Court, the Tribunal ought not to have refused to follow the order of the High Court.*
>
> *26. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not be a ground for review of such*

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judgment merely because a subsequent judgment of the Single Judge has taken contrary view. That does not confer jurisdiction upon the Tribunal to ignore the judgment and direction of the High Court given in the case of the appellants."

21. This court has also ruled, in *Lekh Raj* v. *Ranjit Singh*[1] that subsequent changes in law, cannot divest parties of the benefit derived by them in a litigation that attained finality, through a decree:

"21. If the rights of the parties had already been crystallised then, in our opinion, subsequent change in law would not take away such rights which had attained finality due to lis coming to an end inter se the parties prior to such change."

22. In another judgment, pertinent to the facts of this case, the state invoked its revisional power to nullify the effect of orders which had attained finality and were inuring in favour of private parties. It was held that such action was without authority of law in *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham* v. *K. Suresh Reddy*[2], where the court considered the provisions of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The provision in Section 50-B(4) empowered the statutory authority to exercise *suo motu* revisional power at any time. The Court held that:

"9. ... Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). ... Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words 'at any time', the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power 'at any time' only means that no specific period such as days, months or years are not

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(sic) prescribed reckoning from a particular date. But that does not mean that 'at any time' should be unguided and arbitrary. In this view, 'at any time' must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

23. The above judgment was followed in *State of Andhra Pradesh* v. *T. Yadagiri Reddy*[10] and *Sulochana Chandrakant Galande* v. *Pune Municipal Transport*[11].

24. In view of the above, it is held that the argument of the society (i.e., appellant in C.A. No. 5328-29/2016) is merited. The judgments of the courts in its favour, clearly reveal that the 1.4 hectares owned by it, for which conversion (from agricultural to non-agricultural use) was sanctioned, was sought to be cancelled, on the ground that the land, fell within the submergence area. The history of the previous litigation - which the NGT was seized with - reveals that the land forming part of Khasra No. 1248, owned by the society, was directly in issue in a litigation to which the state was a party, and in which it lost. That decree was affirmed by all the courts. When the NGT was made aware of this fact, it chose to ignore it. Without a review, or any known process by which a decree concerning the same facts could be re-opened, the NGT could not have rejected the society's contentions. The society's appeal, therefore, requires to succeed.

25. As regards to the other appeals, this court notes that the NGT did not advert to any facts, such as the existence of the Development/Master Plan, or the green area, and the road, after which the plots were sought to be developed, although these were expressly brought to its notice, in the review proceedings. Furthermore, this court has also been appraised of the fact that the inquiry by the revenue authorities, after the second order was made, has now resulted in awareness on the part of the Collector, and the Parishad, that the map on which the NGT based its main order, was only a proposal and not a final map. Moreover, a fresh litigation (O.A. No. 70/2022) is also pending. In these circumstances, it would be appropriate that the other appeals too are allowed, and the NGT considers the issue, afresh in O.A. No. 70/2022, and ensures that the precise boundaries of the *talab* are ascertained by a properly constituted committee.

26. In view of the above, the following directions are issued:

(a) C.A. No. 5328-29/2016 is allowed. The society's rights, title, and interest in respect of the land purchased by it, for which construction permission was granted, and in respect of which decree was made by the Civil Judge First Class, Mandsaur in C.S. No. 524A/88 dated 24.12.1994, ultimately confirmed by the Madhya Pradesh High Court in S.A. No. 415/2001, by order dated 23.06.2011 shall not be disturbed or affected, in any manner.

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(b) All other appeals are allowed with the direction that the NGT shall consider the question of precise boundaries of the *talab*, after considering the report of a committee, in the pending proceedings, i.e., O.A. No. 70/2022. The appellants in these proceedings are at liberty to implead themselves in the said proceeding before the NGT, which shall hear them, and consider their submissions, before rendering a final order.

(c) The committee referred to in (b) above shall consist of competent officers nominated by

(i) the Collector, from the Revenue Department;

(ii) the Chief Officer/CEO/Chairman TCD;

(iii) the Chairman/President of the Parishad; and

(iv) by the competent official of the Department of Water Resources, nominated by the Principal Secretary.

(d) The above officials nominated by the respective named officers, shall inspect the area, and also consider the record. On the basis of the inspection and observation of the record, they shall submit a report to the NGT; copies of such report shall be made available to all parties. The NGT shall thereafter hear all parties, and consider their submissions, while rendering final order.

27. The appeals are allowed, and pending applications, if any, are disposed of, in the above terms, without order on costs.

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[1] Against order dated 10.7.2018 in WP No. 3484/2018 (PIL) of the Madhya Pradesh High Court

[2] Dated 17.02.2016 in OA No. 100/2015; dated 19.04.2016 in RA No. 3/2016; dated 21.09.2020 in OA No. 17/2018; dated 18.11.2020 in RA No. 8 & 9/2020 and order dated 25.11.2020 in MA Nos. 9, 11 & 14/2020

[3] By order dated 24.12.1994 passed by the Civil Judge First Class, Mandsaur in CS No. 524A/88

[4] By order dated 18.05.2001 passed by the Additional District Judge in RCA No. 80A/2001

[5] By order dated 23.06.2011 of the Madhya Pradesh High Court in SA No. 415/2001

[6] By order dated 08.02.2016 in SLP (CC) No. 2066/2016

[7] (2015) 2 SCC 653 : (2014) 13 SCR 540

[8] (2018) 12 SCC 750: (2017)7 SCR 542

[9] (2003) 7 SCC 667 : 2003 Supp (2) SCR 698

[10] (2008) 16 SCC 299 : (2008) 16 SCR 792

[11] (2010) 8 SCC 467 : (2010) 9 SCR 476

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Annexure 12 (Colly)

2020 SCC OnLine NGT 867

In the National Green Tribunal*

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

Muslim Kassar Vikas Sangthan (Regd.) ... Applicant;

Versus

Delhi Development Authority and Others ... Respondent(s);

Original Application No. 285/2020

Decided on December 11, 2020, [Date of Hearing : 11.12.2020]

Advocate who appeared in this case:

Mr. Bhupesh Narula, Advocate for the Applicant;

ORDER

1. This application seeks injunction against demolition of *Dhobi Ghat*, Okhla Delhi. The applicant approached the High Court of Delhi by way of *WP(C) 8963/2020, Muslim Kassar Vikas Sangthan (Reg.)* v. *Delhi Development Authority* which was disposed of on 12.11.2020 as follows:—

> *"3. In view of the above, it would be in the interest of justice that the petitioners may approach the NGT.*
>
> *4. At this stage, learned counsel for the petitioner states that he should be given some time to approach NGT. Learned senior counsel for the respondent, however, points out that a perusal of the photographs placed on record shows that there are no relevant structures existing at the site. However, in view of the order of the Division Bench, let the respondent DDA maintain status quo as of today for the next 10 days to enable the petitioners to approach the NGT.*
>
> *5. Nothing further survives in the petition. Same stands disposed of. All pending applications, if any, also stand disposed of accordingly."*

2. We find that the grievance in the application does not fall in the jurisdiction of this Tribunal under Sections 14 and 15 of the National Green Tribunal Act, 2010. Such jurisdiction can be invoked by a victim of pollution for restoration of environment or for compensation to the victim. Such an issue is not shown to be involved in the matter.

The application is disposed of as not maintainable.

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* Principal Bench at New Delhi

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2017 SCC OnLine NGT 1032

In the National Green Tribunal
Principal Bench, New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND JAWAD RAHIM, J.M., RAGHUVENDRA S. RATHORE, J.M. AND AJAY A. DESHPANDE, E.M.)

In the matter of:

Nigam Priyae Saroop R/o 1st Floor State Bank of India Building Rajouri District-Rajouri, Pin-185131 (Jammu and Kashmir State) ... Applicant;

Versus

1. State of Jammu and Kashmir through Chief Secretary to Government, Civil Secretariat, Jammu-180001
2. Secretary, Department of Forests, J&K State, Civil Secretariat Jammu-180001
3. Principal Chief Conservator of Forests, J&K State, Van Bhawan, Gummat, Jammu-180001
4. Special Secretary (Technical), Department of Forests, Environment and Ecology, Jammu and Kashmir State, Jammu 180001
5. Secretary, Higher Education Department, J&K State, Jammu 180001
6. Chief Wild Life Warden, J&K State, Jammu-180001
7. Deputy Commissioner, Jammu-180001
8. Union of India through Ministry of Human Resource and Development, through its Secretary, Govt. of India, Shastri Bhawan, New Delhi-110001
9. Ministry of Environment, Forest and Climate Change through its Secretary, Govt. of India, Indira Paryawaran Bhawan, Jor Bagh Road, New Delhi-110003 ... Respondents.

Original Application No. 132 of 2016

Decided on May 1, 2017 [Hearing on: February 13, 2017]

Counsel for Applicant:

Mr. R.P. Sharma, Adv.

Counsel for Respondents:

Mr. Sunil Fernades and Mr. Arnav Vdiyarthi, Advs. for respondent no. 1 to 7

Mr. B.V. Niren, Mr. Ramesh Thakur and Mr. Varun Bhati, Advs. for respondent no. 8

Mr. Atiin Shankar Rastogi and Ms. Neha Rajpal, Advs. for respondent no. 9

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER:— The applicant after being shocked on reading the news item, reported in *Daily Excelsior Jammu* dated 17th February, 2016 giving details of the transfer made by State Government of 159 hectares of forest land to the Higher Education Department for establishment of the Indian Institute of Technology (IIT) in Nagrota area of Jammu district, has filed this Original

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Application under Section 14, 15 and 18(1) of the National Green Tribunal Act, 2010. Applicant has therefore prayed that:

(i) The decision taken by the Forest Advisory Committee in its 91st meeting agenda clause 91.09 on the proposal to allow use of 159 hectares of forest land for construction of IIT Jammu without requisite corum was incompetent, invalid, a fraud on the statute and not binding on the Govt. It is nonest and void ab-initio.

(ii) That the Government order no. 41/FST-2016 dated 11.02.2016 under which sanction has been accorded to the use of 159 hectare of forest land for construction of IIT Jammu for Higher Education Department in Jammu Forest Division is liable to be quashed and set aside.

(iii) The transfer of forest land for non-forestry purpose is impermissible under the provisions of J&K Forest Conservation Act, 1997 and Rules, Jammu and Kashmir State Forest Policy 2010, J&K Wild Life Protection Act, 1978 and Environment Protection Act, 1986 and Rules. It is fraught with serious consequences to ecology and environment besides resulting in irreversible damage to the eco system, health of the local populace and flora and fauna.

(iv) To grant appropriate orders for restoration of damage caused by cutting of forest trees and clearing of saplings etc. without a valid transfer order.

(v) To save the green forest trees, forest land, wild life sanctuary which is natural habitat of forest fowls, black partridge, mountain quail, peafowl-peacocks, the national bird of India, wild dogs, deer, monkeys, langurs and other animals and birds besides other countless fauna and flora existing on the forest land which was transferred to the Higher Education Department for establishment of IIT Jammu in an illegal manner, at the cost of the environment and ecology of the area. The non-applicants be further restrained from entering upon the forest land, starting any construction of boundary walls or other buildings and roads in order to change the land use in any manner till the decision of matter.

Brief Facts

2. As per the newspaper report, the Forest Advisory Committee (FAC) had on 30th November, 2015, under the chairmanship of Chief Secretary, Chairman FAC and with the approval of the Governor on 27th January, 2016, has authorized the Special Secretary (Technical), Department of Forest, Environment and Ecology, respondent no. 4 to issue Govt. order no. 41/FST-2016 to transfer the forest land measuring 159 hectares for its use for the construction of IIT Jammu by the Higher Education Department. The said forest land has 1650 trees and 40133 saplings.

3. The order of demarcation of land at Jagti Nagrota, intimated to the Deputy Commissioner, Jammu by the Tehsildar, Nagrota mentions total land measuring in 3247 Kanals-07 Marlas, which is under the occupation of forest. The order of Deputy Commissioner, Jammu makes a mention of approval by the State Selection Committee to get the forest land converted into use as a site for the establishment of IIT at Jammu. The area is vital for lakhs of people residing in Jammu city and its suburb.

4. The authorities have started felling and axing thick forest without any count which is like a disaster for the entire flora and fauna. It is likely to cause environmental and ecological damage beyond repair. There is no demarcation and the entire forest area has been exposed to the wild life poachers, timber mafia and land mafia. There are vast stretches of waste land, shamlat land, State land and other barren unproductive lands available in abundance in Jammu district as well as other adjoining districts of Rajouri, Udhampur and Samba district of Jammu Division for the establishment of IIT in Jammu area.

5. The case of the applicant is that the impugned orders, administrative in nature, have been issued by the respondents effecting the transfer of forest land, removal of

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forest trees in habitat of the forest are illegal, without the authority of law and malafide in accordance with the facts and circumstances of the case.

Further, the case of the applicant is that under the provision of Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997, restrictions have been laid down on de-notifying of demarcated forest or de-reservation or use of forest land for non-forest purposes. There is no provision for the transfer of forest land for any purpose other than given in the Act. The Act provides the purposes such as rural roads, not exceeding 5 hectares of forest land and 2 hectares of forest land for the execution of the electric, irrigation and public health engineering works. The said Act does not provide for transfer of huge chunk of 159 hectares of forest land in favour of Higher Education Department.

6. The impugned orders have been passed in total violation of principles of natural justice, fair play and good conscience. No public notice, whatsoever, had been given to notify objections. The entire action is grossly illegal which grossly affects a large number of public, besides the voiceless wildlife.

7. The area under transfer is having a thick forest growth of pine trees, besides other protected species of trees and plants and a host of medicinal herbs etc. which provides life to the ecology and environment of the area and which are essential for the health of the citizens and for the maintenance of bio-diversity.

The estimation of 1650 trees and 40133 saplings given by the Forest Department is not correct. It would not be just and proper that land in a dense forest and a habitat of jungle fowls, black partridge, mountain quail, peafowl-peacocks, the national bird of India, wild dogs, deer, monkeys, and other animals, besides other countless fauna and flora is sought to be transferred for the construction of IIT. The transfer of land would further adversely affect the eco-sensitive zone of Ramnagar Wildlife Sanctuary which is a natural habitat of wild life. The sanctuary is a part of the forest area under transfer and cannot be sustained due to the development of huge building infrastructure of IIT in its vicinity.

8. It is also the case of the applicant that the transfer of forest land and conversion of its use for the construction of IIT building is not justified, in view of the facts that large tracts of wasteland, State land, shamlat land and private land are available in the district of Jammu, as well the adjoining districts of Samba, Udhampur, Reasi, Rajouri and Kathua.

The respondent had not been fair in respect of the valuation of the forest land in question as described in the newspaper of Rs. 14.93 crore and the compensation of trees calculated at Rs. 1.93 crore. Similarly, the calculation of compensatory afforestation requirement of Rs. 3.18 crore, projected by the Forest Department, is nothing but a farce. It is inestimable in terms of cost of land, trees, loss to the flora and fauna, environment and ecology, besides, the effects to the life of lakhs of citizens both in terms. of health and living conditions. Therefore, it is submitted by the applicant that the impugned orders passed by the respondents be quashed and appropriate orders for restriction on damage caused by cutting the forest trees and clearing the saplings etc. be passed by this Tribunal.

9. The respondent State has filed an affidavit in response to the Original Application. It has been submitted by the respondent that the allegations leveled in the application are misleading, misconceived and incorrect. The respondents have further submitted that the Government of India, in 2014, decided to establish an IIT at Jammu, in the State of Jammu & Kashmir, amongst other places in the country. Consequently, the Ministry of Human Resources & Development (MHRD) requested the State Government, in August, 2014, to identify suitable land measuring 500-600 acres, free of cost and any legal encumbrances, possessing requisite physical and social infrastructure, including good connectivity by road, rail and airways for the

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purpose of establishing the said IIT.

10. The State Government had suggested three sites to the MHRD namely:—

a. Badla-Mohargarh, District Samba;

b. Harsath-Nonath, District Samba; and

c. Jangalote, District Kathua

11. The above mentioned sites were inspected by the Site Selection Committee of MHRD in April, 2015 and the said Committee rejected all the three sites on account of inadequate facilities and lack of adequate connectivity. The State Government was once again requested to submit fresh sites in Jammu. The State Government had again suggested five other sites which were:

i. Khanpor, Nagrota, District Jammu

ii. Jagti Village, Tehsil Nagrota, District Jammu

iii. Panjgrain

iv. Thathar, Keran and

v. Sunjwan

12. Subsequently the Site Selection Committee of MHRD visited the above sites in June 2015 and selected the site at Jagti Village, Tehsil Nagrota, Jammu District, i.e., the present site, for the establishment of IIT. Consequently, the Central Govt. had issued various instructions to the State Government so as to ensure that the land is made available for the establishment of IIT, Jammu. According to the respondents the State Government had no role whatsoever in selecting the said site and it was solely done on the expertise and advises of the Central Government. i.e. MHRD. The State Government has merely executed the instructions issued by the Central Government in this regard. Therefore, the allegations contained in the instant application against the State Government are wholly incorrect and misleading.

13. It is further submitted by the respondent that based on the instructions issued by the Central Government, the State Government undertook the procedures, as prescribed under law, to obtain the requisite Forest clearance. The land selected by the Central Government was under the ownership of the Forest Department and therefore the indent (i.e. Application/Request) dated 28.07.2015 for various clearances, as per law, was placed by the user agency i.e. Higher Education Department, Government of Jammu & Kashmir with the Principal Chief Conservator of Forest (PCCF), Government of Jammu and Kashmir.

14. Thereafter, a Joint Verification Committee consisting of the officersof Forest and Higher Education Department of the State Govt. was constituted to conduct verification of the trees at the site. The said verification was completed on 01.10.2015 and a case for compensation and forest clearance was sent to the PCCF, Jammu & Kashmir on 04.11.2015.

15. A proposal of the PCCF was placed before the State Forest Advisory Committee, which considered the same in its meeting held on 30.11.2015. The proposal was cleared in the meeting to use 159 hectares of forest land in village Jagti, Tehsil Nagrota, District Jammu for construction of an IIT campus.

16. The Forest Department, had accordingly issued sanction to use 159 hectares of forest land vide G.O. No. 41 FST-2016 dated 11.02.2016, after duly complying with the procedure contemplated under Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997.

17. Pursuant to the Notification dated 11.02.2016, the Forest Department was asked to mark the trees which will have to be cut down for the construction of IIT. The Divisional Forest Officer (DFO), Jammu submitted a list of 1311 trees/saplings falling under the land sanctioned for the IIT, Jammu, which would have to be felled. It is pertinent to note that there were only 51 trees, which were more than 30-40 cm in

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diameter and the remaining 1260, were small plants and saplings.

18. The technical sanction to cut the marked trees was issued by Conservator of Forests on 13.02.2016 and accordingly felling of 1311 trees (51 trees above 30/40 cm diameter and rest were minor trees/saplings) had started by the Forest Department, which was completed on 28.02.2016.

19. The respondent has submitted that the proposed IIT campus at Jammu is not a part of Ramnagar Wildlife Sanctuary, as alleged in the Application. The campus lies outside the boundary of the Wildlife Sanctuary. However, it does fall within the eco-sensitive zone of the sanctuary. The G.O. dated 11.02.2016 contains detailed instructions which the IIT was to follow with regards to area that fall under ecosensitive zone of wildlife sanctuary. Clauses 1 to 16 of the said G.O. clearly stipulates that the State Government shall comply with the obligation and notification issued, from time to time, by the Ministry of Environment and Forest (MoEF) with regard to building and construction projects for educational institution in an area falling in eco-sensitive zone.

20. The State Government has duly complied with the notification dated 22.12.2014 issued by MoEF, along with the clarificatory O.M. dated 09.12.2015, in its letter and spirit. The State Government has also followed the stipulation contained in the MoEF circular and O.M. dated 22.12.2015 which clarifies the above notification dated 22.12.2014 and contains various guidelines to be followed in respect of building projects.

A perusal of the notification of MoEF dated 22.12.2014 along with O.M. dated 09.06.2015 clearly reveals that schools, colleges and hostels for educational institutions are exempted from obtaining prior environmental clearances under the provisions of Environment Impact Assessment Notification 2006, (thereafter referred as EIA Notification 2006).

21. Therefore, according to the respondents, the applicant has legally and factually erred in contending that the State Government has not obtained environmental clearance from MoEF for the construction of IIT, Jammu. Since IIT Jammu is an educational institution, it is per se exempted from the requirement of obtaining environmental clearance.

22. It is further alleged that the State Government has incorrectly calculated the Net Present Value ("NPV"). As per respondent State the allegation is absolutely incorrect. Attention of the Tribunal has been invited to the contents of the G.O. dated 11.02.2016 (marked as Annexure-B) wherein summary of amounts to be deposited under various heads are provided. The NPV has been calculated as per order dated 28.03.2008, issued by the Hon'ble Supreme Court in the case of *T.N. Godavarman Thirmulpad* v. *U.O.I.* (W.P. (C) 202/1995), where it comes to be 14,93,01,000/-. Apart from the NPV, an amount of Rs. 3.18 crores is also determined with regards to compensation for afforestation and an amount of Rs. 1.93 crores is fixed for compensation of trees/poles/saplings. Therefore the total amount is in excess of Rs. 20 crores which is already deposited by User Agency i.e. the Higher Education Department to the Forest Department and therefore, the allegations leveled by the applicant herein are totally misconceived and baseless.

23. In the response filed to the application by MoEF (respondent no. 9), it has been submitted that the Environment (Protection) Act, 1986 authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any industry facility on environmental grounds.

24. The answering respondent has issued EIA Notification, 2006 vide S.O. No. 1533 (E) on 14.09.2006 with an objective to formulate a transparent, decentralized and efficient regulatory mechanism; to integrate environmental concerns into the

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developmental process for ensuring the goals of sustainable development in a time bound manner and to implement the provisions of the EIA Notification, 2006, the Ministry issued Notification/office memorandum as and when required.

25. The Environment Impact Assessment Notification, 2006 issued on 14.09.2006 with respect to the provisions relating to building and construction projects, was amended vide Notification No. S.O. (E) 3252 dated 22.12.2014, in exercise of the powers conferred by Clause (v) of Sub Section (2) of Section 3 of the Environment (Protection) Act, 1986, by the answering respondent. Vide this amended Notification; certain projects were excluded/exempted from the ambit of building and construction projects. The relevant part of the amended Notification is as under:

(1)	(2)	(3)	(4)	(5)
8		**Building/Construction projects/ Area Development projects and Townships**		
8(a)	Building and construction on projects		≥20000 sq. mtrs. and <1,50,000 sq. mtrs. of built-up area	The term "built up area" for the purpose of this notification the buildup or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects. **Note 1.-** The projects or activities shall not include industrial shed, school, college hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. **Note 2.-** "General

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				conditions" shall not apply.
8(b)	Townships and area Development projects		Covering an area ≥50 ha and or built up area ≥1,50,000 sq. mtrs	A project or Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category B1 Project. **Note.-** "General Conditions" shall not apply.

26. The aforementioned entries 8(a) and 8(b) are qualified as category 'B' projects under the EIA Notification, 2006 and the said projects are appraised by the State Level Expert Appraisal Committees (SEACs) and approved by the State Environmental Impact Assessment Authorities (SEIAAs).

27. It is submitted by the respondent that vide Notification No. S.O.(E) 3252 dated 22.12.2014, it has exempted the buildings for industrial shed, school, college, university and hostel of educational institutions from the requirement of prior environmental clearance subject to sustainable environmental management. The provisions have further clarified the meaning of industrial shed and guidelines for sustainable environmental management therein. Sufficient environmental safeguards have been mandated to ensure sustainable environmental management for solid and liquid waste discharge, rain water harvesting and use of recycled materials in construction and others.

28. The Building of educational institutions including universities are exempted from the process of environmental clearance. However, the institute has to follow the guidelines for building projects i.e. educational institute has to ensure sustainable environmental management as per the O.M. dated 09.06.2015 issued by the respondent.

29. Jammu and Kashmir Forest (Conservation) Act, 1997 is applicable for the project in question, which deals with the demarcation, diversion of forest land or use of forest land for non-forest purpose. It is submitted by the respondent that whether land for the project in question is forest land or not, and has it been transferred to the university following due process of law, shall be responded by the State of Jammu Kashmir i.e. respondent no. 1 in the present case, as per the provisions of the state of Jammu and Kashmir Forest (Conservation) Act, 1997.

30. The applicant in his rejoinder to the affidavit filed by respondent no. 1 to 7 has submitted that the available record shows that the proposal by the Principal Chief Conservator Forests placed before the State Forest Advisory Committee was cleared in its meeting held on 30.11.2015. The minutes of the 91st FAC meeting reveal that it was a mere formality in which, as many as, 12 proposals were taken up. The proposal 91.09 pertaining to allow the use of 159 Ha of forest land for construction of IIT Jammu was cleared without any deliberation/consideration of provisions of J&K Forest (Conservation) Act meticulously, more particularly the mandate of Section 2 imposing restriction on de-notifying of use of forest land for non-forest purpose. The State Govt.

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had a responsibility and was required to exercise its own wisdom after receiving a valid advice of Advisory Committee. No such order independent of the advice has been shown or produced. The State Govt./administration failed in its statutory duty. The Act forbids to accord permission for any purpose other than rural roads etc., not exceeding 5 hectares. "Non-forest purpose" has also been explicitly explained. The sanction was invalid and illegal per se. The Coram of Advisory Committee required 2 eminent environmentalists. The private members incorporated are not environmentalists. A mere name does not suggest any contribution to environment. The powers under J&K Forest Conservation Act/State Forest Policy 2010 to protect forest land, in its public duty, have been abdicated by the State Govt./Administration.

31. Further, it is submitted that J&K State Forest Policy 2010 at Clause 4.4(a) expressly lays down that diversion of forest land for non-forestry purposes will be considered only as a last resort after exploring all other alternatives and not in a routine manner "(c) In protected and ecologically sensitive areas, Environment Impact Assessment will be conducted in accordance with environmental policy and laws before allowing the use of forest land for non-forestry purpose". No such effort to locate land has been indicated in the Govt. order.

32. It is also stated that there is no exemption under the J&K Forest Conservation Act./Rules/J&K State Forest Policy 2010 to get forest land. The admission in para 7 of the reply by the State Govt. that the site of forest land to be transferred falls within the eco-sensitive zone of the wild life sanctuary, a valid permission was required from National Board for Wild Life also under the Wild Life Protection Act. The Notification of MoEF regarding exemption from prior environmental clearance is not attracted in case of large chunk of forest land in J&K State in favour of the Higher Education Department.

33. The applicant further submitted that the transfer of forest land is illegal. The transfer of forest land for non-forestry purpose is impermissible under the provisions of J&K Forest Conservation Act, 1997 and Rules, Jammu and Kashmir State Forest Policy 2010, J&K Wild Life Protection Act, 1978 and Environment Protection Act, 1986 and Rules. It is fraught with serious consequences to ecology and environment besides resulting in irreversible damage to the eco system, health of the local populace and flora and fauna. The decision taken by the Forest Advisory Committee in its 91st meeting agenda clause 9.09 on the proposal to allow use of 159 Ha. of forest land for construction of IIT Jammu without requisite Coram was incompetent, invalid, a fraud on the statute and not binding on the Govt. It is *non-est* and void *ab-initio*.

The Government order no. 41/FST-2016 dated 11.02.2016 under which sanction has been accorded to the use of 159 hectares of forest land for construction of IIT Jammu for Higher Education Department in Jammu Forest Division is liable to be quashed and set aside.

34. After considering the application as well as the material on record it is revealed that on having come across the news item of 17.02.2016 with regard to transfer of 149 hectares of forest land to the Higher Education Department in Nagrota area of Jammu district that the applicant has approached this Tribunal. The primary grievance and the relief sought by the applicant is against the resolution passed by the Forest Advisory Committee under the chairmanship of the Chief Secretary of the State of Jammu & Kashmir, on 30.11.2015 and the authorization, in consequence thereof, to the Special Secretary (Technical), Department of Forest, Environment and Ecology, State of Jammu & Kashmir to issue order for transfer of the forest land for use of construction of IIT Jammu. Accordingly, respondent no. 4 issued the order no. 41/FST-2016 on 11.02.2016 by which sanction was accorded to use the forest land for construction. Transfer of forest land for non-forestry purpose being impermissible under the provision of Jammu & Kashmir Forest (Conservation) Act, Rules, Forest

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Policy 2010 and therefore, the applicant has prayed to declare the said orders to be void.

35. The State Government undertook the procedure, as prescribed under law, to obtain requisite forest clearance. The ownership of land was under the Forest Department and therefore indent dated 28.07.2015 for forest clearances was placed under the user agency i.e. Higher Education Department, with the Principal Chief Conservator of Forest, Government of Jammu & Kashmir. The Forest Department had issued sanction to use the land vide order dated 11.02.2016 after duly complying with the procedure contemplated under Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997.

36. The Ministry of Environment and Forest, respondent no. 9, in its reply to the application has also submitted that it is the Jammu & Kashmir Forest (Conservation) Act, 1997 applicable for the project in question, which deals with demarcation, diversion of forest land or use of forest land for non-forest purpose. Further, it is submitted by respondent that whether land for the project in question is a forest land or not, and it has been transferred to the University following due process of law, shall be responded by the State of Jammu & Kashmir in the present case, as per the provisions of the State of Jammu & Kashmir Forest (Conservation) Act, 1997.

Further, it is the Jammu & Kashmir Forest (Conservation) Act, 1997 which is relevant law on the basis of which the issue raised in the present case is to be adjudicated.

37. In the circumstances of the present case, the first and foremost question for our consideration is that while the matter relates to State of Jammu & Kashmir Forest (Conservation) Act, 1997, whether this Tribunal has the jurisdiction to adjudicate upon the present case.

38. A look to the relevant provisions of NGT Act, 2010 would show that this Tribunal has jurisdiction where any question arises as to implementation of the enactment which has been enumerated in Schedule I. Relevant provisions of the Act of 2010 is as under:

> *'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.'*
>
> ***SCHEDULE I***
>
> *'[See Sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]*
>
> *1. The Water (Prevention and Control of Pollution) Act, 1974;*
> *2. The Water (Prevention and Control of Pollution) Cess Act, 1977;*
> *3. The Forest (Conservation) Act, 1980;*
> *4. The Air (Prevention and Control of Pollution) Act, 1981;*
> *5. The Environment (Protection) Act, 1986;*
> *6. The Public Liability Insurance Act, 1991;*
> *7. The Biological Diversity Act, 2002'.*

39. In other words, the Tribunal has jurisdiction over civil cases where a substantial question relating to environment is involved which arises out of enforcement of the aforesaid seven enactments as given in the Schedule. The Tribunal is to settle disputes, under Section 14 of the Act in all civil cases where substantial question relating to environment is involved. It is important to note that the conjuncture 'and' used in the later part of the provision has significance. The civil cases involving substantial question relating to environment must be the one which arises out of implementation of the enactments given in the Schedule namely; Water (Prevention

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and Control of Pollution) Act, 1974, Water (Prevention and Control of Pollution) Cess Act, 1977, Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991 and Biological Diversity Act, 2002.

This view finds support in the principle of law laid down by the Hon'ble Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*, (2012) 8 SCC 326 the Hon'ble Court held that:

> *"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT")."*

40. In the case of *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267 which is a case of great significance relating to the protection and conservation of the forest throughout the country, the Hon'ble Supreme Court of India heard the Central Government as well as the Governments of all the States and in so far as State of Jammu & Kashmir is concerned it had issued directions, in para 5 II as under:

> *"4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam."*

As has been laid down by the Hon'ble Supreme Court of India any felling of trees in forest area otherwise or any clearance of land for execution of projects, shall be in direct compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto.

41. Therefore, the controversy raised herein is in respect of the transfer of land for the project in question which is very much part of the State of Jammu and Kashmir. On the count that the State of Jammu & Kashmir Forest Act, 1990 not being one of the enactments mentioned in Schedule I of the Act of 2010, the Tribunal does not have jurisdiction to adjudicate the present controversy as it does not fall within the purview and scope of Section 14 of the NGT Act, 2010 so as to settle the dispute herein.

42. For the aforesaid reasons it is crystal clear that the controversy of transfer of forest land for non-forest purpose on the proposal of the Forest Advisory Committee, and the order dated 11.02.2016 passed by the State of Jammu & Kashmir whereby use of 159 hectares of land has been sanctioned for construction of the institution for Higher Education Department in Jammu Forest Division, cannot be adjudicated by this Tribunal on account of lack of statutory jurisdiction.

43. Consequently, this Original Application is dismissed, without any order as to cost.

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[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12122-12123 OF 2018

MUNICIPAL CORPORATION OF GREATER MUMBAI ...

APPELLANT(S)

VERSUS

ANKITA SINHA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 86/2019

CIVIL APPEAL NO. 5902/2019

CIVIL APPEAL NO. 6273 OF 2021
(Arising out of SLP(C) No. 6732/2021)

CIVIL APPEAL NO. 6274 OF 2021
(Arising out of SLP(C) No. 5930/2021)

CIVIL APPEAL NO. 6275 OF 2021
(Arising out of SLP(C) No. 6733/2021)

CIVIL APPEAL NO. 6276 OF 2021
(Arising out of SLP(C) No. 16448 OF 2021)
Diary No. 11655/2021

CIVIL APPEAL NO. 6277-6278 OF 2021
(Arising out of SLP(C) No.16449-16450 OF 2021)
Diary No. 13789/2021

CIVIL APPEAL NO. 6279 OF 2021
(Arising out of SLP(C) No. 16451 OF 2021)
Diary No. 13811/2021

CIVIL APPEAL NO.6280-6281 OF 2021

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(Arising out of SLP(C) No.16452-16453 OF 2021)
Diary No. 13890/2021

CIVIL APPEAL NO. 2897/2021

CIVIL APPEAL NO. 6282 OF 2021
(Arising out of SLP(C) No. 11426 OF 2021)

CIVIL APPEAL NO. 6283 OF 2021
(Arising out of SLP(C) No. 11427 OF 2021)

CIVIL APPEAL NO. 6262 OF 2021
Diary No. 16948 OF 2021

CIVIL APPEAL NO. 6284 OF 2021
(Arising out of SLP(C) No. 11798 OF 2021)

CIVIL APPEAL NO. 6285 OF 2021
(Arising out of SLP(C) No. 12669 OF 2021)

CIVIL APPEAL NO. 6286 OF 2021
(Arising out of SLP(C) No. 16454 OF 2021)
Diary No. 19534/2021

J U D G M E N T

Hrishikesh Roy, J.

"Estragon: Let's go.
Vladimir: We can't.
Estragon: Why not?
Vladimir: We're waiting for Godot." [1]

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the

[1]Beckett, S. (1954). *Waiting for Godot: Tragicomedy in 2 Acts.*

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NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

3. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled *"Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade"* in the online news portal, *The Quint.* The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

4. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of

Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that *'damage to the environment and public health is self-evident'* and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

5. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S.

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Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

7. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved

party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No.86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No.71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

8. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not

important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

9. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted

both counsel argue for keeping away the *suo motu* power from the NGT.

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered Vs. Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was

2 (2013) 15 SCC 341

required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore Vs. Union of India*[3], opined on behalf of a Division Bench that,

> " 67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak Vs. Achyut Kashinath*[4], observed as under : -

> " 34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review

3 (2008) 1 SCC 125
4 (2011) 9 SCC 541

> and the powers which have not been expressly given by the statute cannot be exercised."

11.1 The second limb of contention is that the Act is applicable to *'disputes'* as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[5] wherein the term *'substantial question relating to environment'* was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "**19.** on a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute – it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or

5 (2018) 11 SCC 734

> restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> **20.** ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCc (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> *"34.* To understand the meaning of the word "disputC", it would be appropriate to start With the grammatical or dictionary meaning of the term:
>
> ' *"Dispute"*.—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35. Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> *'Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.' "

11.2 The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial

system but not for any other ameliorative, restorative or preventative functions.

12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*,[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. ..Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B 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.....

6 (2019) 19 SCC 479

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43. ...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 *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, (1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words: (SCR p. 499: AIR p. 789, para 138)

"*138.* 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

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> 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] '. "
>
> 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* [*BSNL* v. *TRAI*, (2014) 3 SCC 222], 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 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860] 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."

12.2 The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

13.1 In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

13.2 The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:-

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to

see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

13.3 The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

13.4 The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in L. Chandra Kumar vs. Union of India, 1997 (3) SCC 261.
>
> No doubt, the Environment Court exercising powers of a Civil court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing

7 Chapter II, 186th Law Commission Report.

tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

13.5 This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

14.1 The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2,3,4,5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow: -

> "2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide

effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law

> Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.
>
> 6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

14.2 A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-

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disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

14.3 Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to *"achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure"*. An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

14.4 The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common

efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

14.5 The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under

Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

14.6 The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION_

15.1 While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging

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societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes,* authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds: a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

15.2 The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

15.3 The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"* as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. vs. State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

15.4 Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

8 1955 (2) SCR 603; AIR 1955 SC 661

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> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by–
> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

15.5 Justice Frankfurter of US Supreme Court in *'Some Reflections on the Reading of Statutes'*, has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. Vs. Ryan,* and the same is taken as a lodestar in our quest,

> "the meaning of a statute is to be looked for, not in any single section, but in all

9 47 Columbia Law Review 527

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the parts together and in their relation to the end in view"[10].

15.6 The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT -

16.1 Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions

10 293 U.S. 388 (1935) (dissenting)
11 *Sarah Mathew v. Institute of Cardio Vascular Diseases* (2014) 2 SCC 62, *New India Assurance Co. Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279.

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will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) *"as the Tribunal may think fit"*. Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) *"any person aggrieved including any representative body / organization"* and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the

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Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the

Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

16.2 While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

16.3 The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives.The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4 By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has

nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5 Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

16.6 Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or

organization who may be interested in the subject matter is permitted to approach the NGT.

16.7 The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

17.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such

matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. *[See Vellore Citizens' Welfare Forum[11] vs. UOI[12]; M.C. Mehta vs. UOI[13]* etc.]

17.2 The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis,* would obviously be beyond the usual understanding in civil cases where

12 (1996) 5 SCC 647
13 (1997) 2 SCC 353

there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

17.4 The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will

> involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active *"dispute"*, but the formulation of *decisions*.

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19.1 With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India*[14], highlighted the NGT's role in the context, in the following words: -

> "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

14 (2012) 8 SCC 326

> 41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

19.2 In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF *SUO MOTU* POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High

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Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1 Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. vs. Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:-

> "40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements.

15 (2019) 18 SCC 494

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> Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

21.2 As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

21.3 Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

> "46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring

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jurisdiction should be preferred rather than one taking away jurisdiction."

21.4 Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* vs. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of *'Merits Review'* and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

21.5 Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as

16 2021 SCC Online SC 7.

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the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

21.6 The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors.*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in

17 (1999) 2 SCC 718

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nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT *VIS-A-VIS* OTHER TRIBUNALS

22.1 While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

22.2 The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok

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Bhushan in *State of Meghalaya vs. All Dimasa Students Union*[18], fittingly observed thus:-

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] , wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)
>
> "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and

18 (2019) 8 SCC 177

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> circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen."

22.3 Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising *"wide range of jurisdiction"* and the *"wide range of powers"*, given to it by the statute.

23. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the

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rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

24.1 The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur Vs. State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

> "14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

24.2 In *DG NHAI vs. Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:-

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19 GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall? *Asian Journal of Law and Society, 7*(1), 85-126.

20 (1999) 2 SCC 131

21 2020 SCC Online SC 572

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

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**** **** **** ****

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent

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> the future occurrence of incidents that impact the environment, are issued."

24.3 In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as *"an expert regulatory body"*, which can issue general directions also *albeit* within the statutory framework.

24.4 The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

24.5 The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing

jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo*

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motu cognizance of matters, for effective discharge of its mandate.

25.2 The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> " 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."

25.3 The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision

conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism

of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

25.5 The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any

application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

25.6 It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass *"award"* and *"order"* and the statute repeatedly uses the word *"decision"*. Therefore, it is appropriate to correlate the word *"decision"* to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The

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specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab & Anr. Vs. Shamlal Murari & Anr.*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e., access to information,

22 (1976) 1 SCC 719

access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

26.1 Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage: -

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through

23. Scott LaFranchi, ***Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool***, 32 B.C. Envtl. Aff. L. Rev. 679 (2005)

> comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

26.2 The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

26.3 As earlier seen, S.20 of the NGT Act which includes the term *"decision"*, in addition to *"order"* and *"award"*, also require the Tribunal to apply the *'Precautionary Principle'* and the statutory mandate being relevant is extracted: -

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

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26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation"*[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

26.5 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive

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24 Vellore Citizens (supra), *S. Jagannathan v. Union of India* (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C Kenchappa and Ors (2006)* 6 SCC 371.

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at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *'The Nature of the Judicial Process'*, stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

27.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice

and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

27.2 Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

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25 Schlosberg D, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009)

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

27.3 There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community." [27]

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26 Schiffer, L. J., & Dowling, T. J. (1997). *Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27*(2), 327-342.

27 Jeff Todd, A "Sense of Equity" in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020).

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An *"equal footing"* conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in

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the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

27.5 In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the *'Blindfold of Lady Justice'*, which symbolizes *"the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."*[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

28.1 Proceeding with the above understating, we can comfortably place the NGT within the rubric of the

28 Supra Note 26.
29 Ibid

larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India,* have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

28.2 By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a

30 *Rural Litigation And Entitlement Kendra & Ors V. State Of U. P. & Ors* AIR 1985 SC 652, *Charan Lal Sahu Vs. Union of India* (1990) 1 SCC 613, *Virender Gaur Vs. State of Haryana* (1995) 2 SCC 577

31 See M.A.A. Baig, *Environmental Law And Justice(1996).* Domenico Amirante, *Environmental Courts In Comparative Perspective: Preliminary Reflections On The National Green Tribunal Of India (2012).* M.K. Ramesh, *Environmental Justice: Courts And Beyond,* Indian Jo. Of Envtl. L. 20(2002).

pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar Vs. State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

28.3 Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'* [34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

32 Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.
33 (1991) 1 SCC 74.
34 M.C. Mehta vs. Union of India, 1987 SCC (1) 395.

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mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . .The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

28.4 It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the *'at risk'* nature of some

35 Rajamani, Lavanya. 2007. ***Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability***. Journal of Environmental Law

36 Supra, Note 19.

populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

28.5 Justice T.S. Doabia in *Environmental & Pollution Laws in India,* has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned." [38]

28.6 Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic,

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37 *M.C. Mehta vs. Union of India* (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action V. Union of India* (1996) 3 SCC 212, *A.P. Pollution Control Board vs. M.V. Nayudu* (1999) 2 SCC 718, *A.P. Pollution Control Board II vs. M.V. Nayudu* (2001) 2 SCC 62.

38 Justice T.S. Doabia, *Environmental & Pollution Laws in India,* 3rd Ed., Vol 2 (2017).

welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach.

28.7 Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority vs. Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which

39 (2021) 4 SCC 309

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> are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi- disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection.. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

28.8 It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

> "With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade." [40]

The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad ConCeption of environmental concerns. Its funCtions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

29. Before we set out our conclusion, we aCknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

40Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29 Pace Envtl. L. Rev. 441 (2012)

30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum,* and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of

India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

32. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle,* or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

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41 Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

42 Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

33. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the *"global impacts of climate change will fall disproportionately on minority and low-income communities"*.[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself

43 Supra Note 23.

requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

35. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT

into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

37. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

38. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the

contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a *'suo motu'* initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

39. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

40. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, We find ourselves saying

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that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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

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.....J.
[HRISHIKESH ROY]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI
OCTOBER 7, 2021

ANNEXURE 13(Colly) 307

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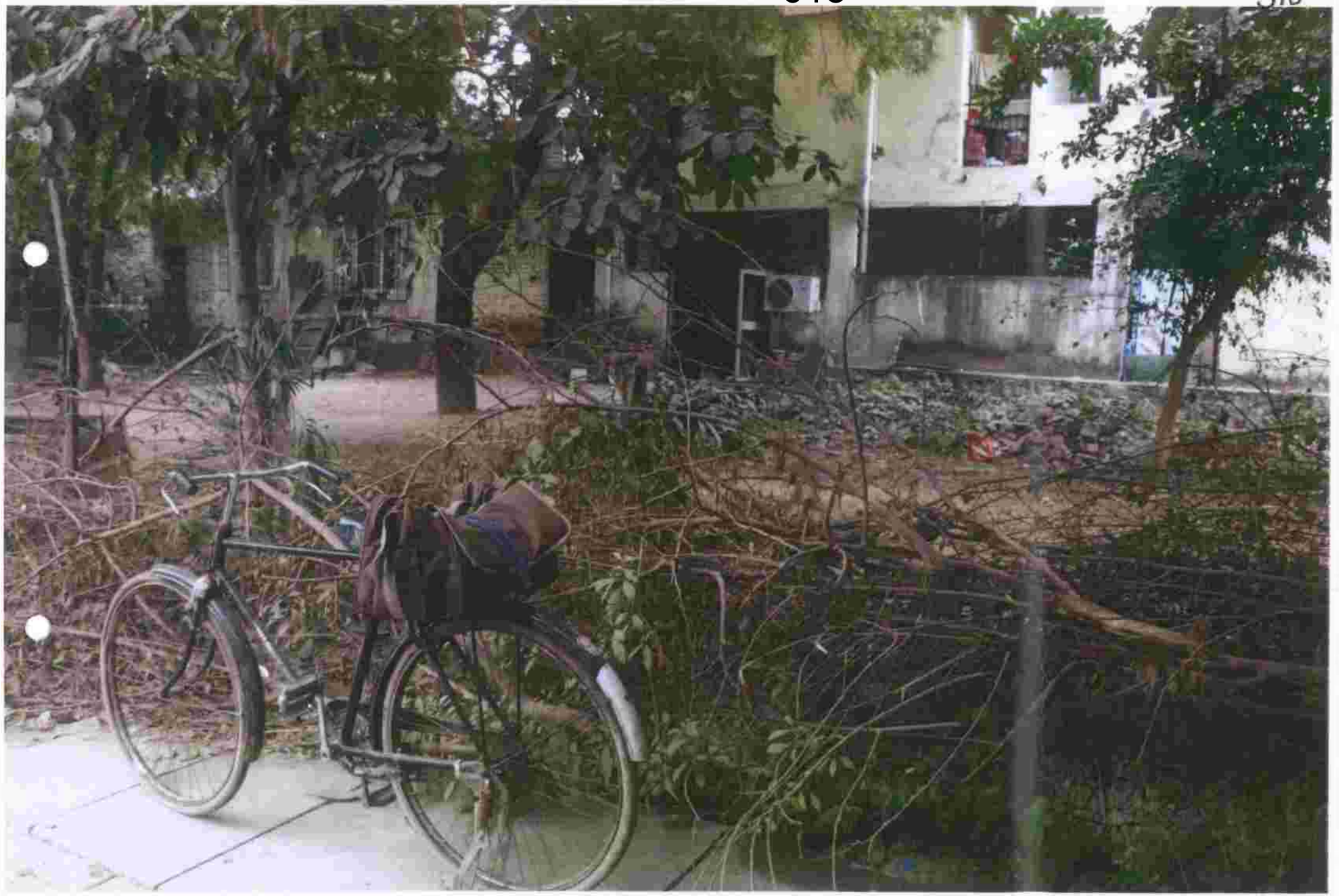


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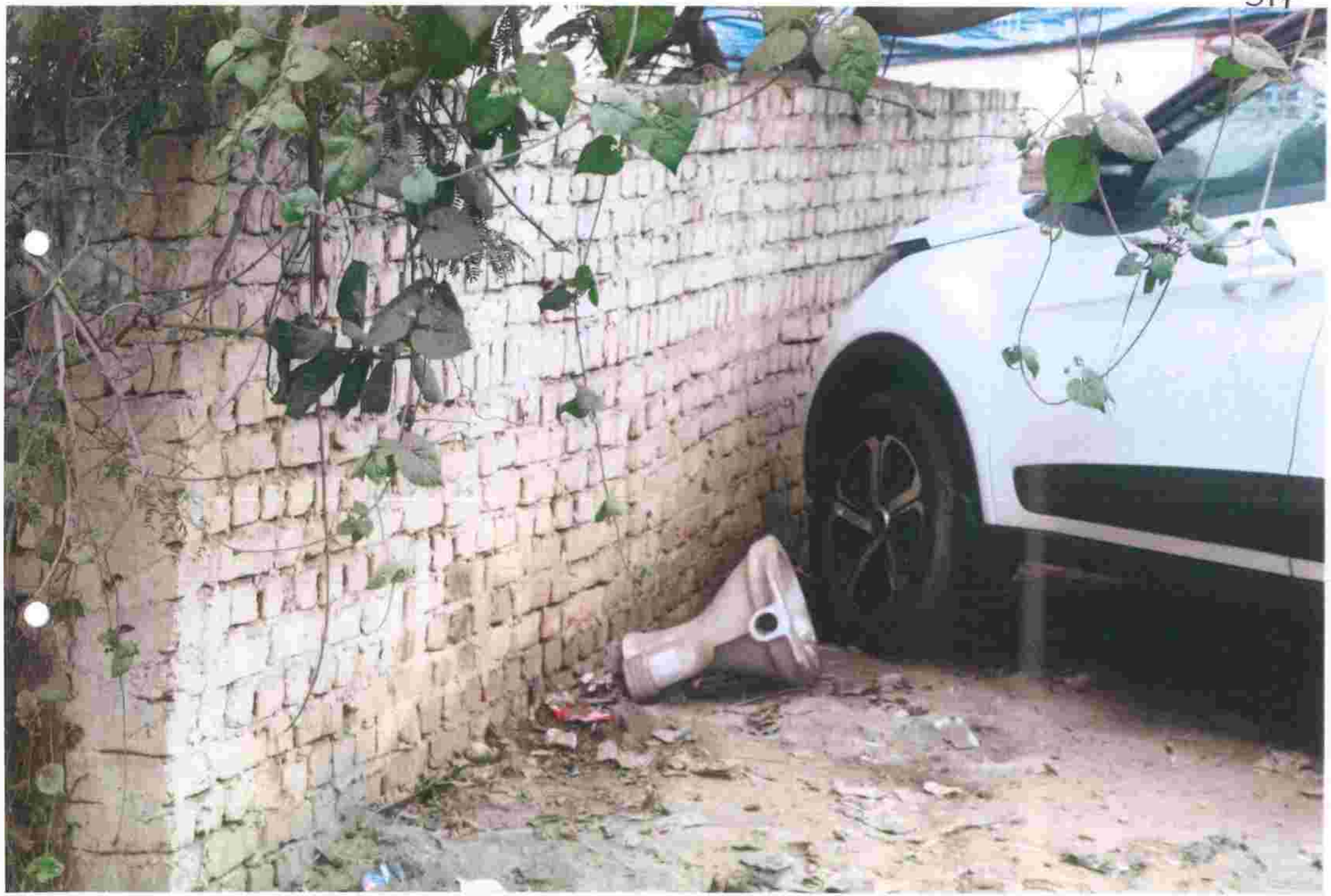

JM

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PROOF OF SERVICE 321

Re: Advance Service of Rejoinder on behalf of Respondent No. 1to the status report filed by DDA

Madhumita Singh <madhumita@casassociates.in>

Tue 2/6/2024 1:57 PM

To:Kritika Gupta <kritika0504@gmail.com>; kjonwal@yahoo.com <kjonwal@yahoo.com>

Dear All,

Please find below the link of the Rejoinder on behalf of Respondent No. 1to the status report filed by DDA in O.A. 914/2022.

https://drive.google.com/file/d/1HQiEjtn3Z5lWGjug-nlkF5SpsWv3NdV1/view?usp=sharing

Regards,

Madhumita Singh (Advocate)

Senior Associate Advisory & Litigation

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