

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH PUNE  
ORIGINAL APPLICATION NO. 148/2016

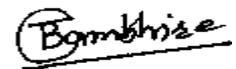
IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE & ANR. ... APPLICANT  
VERSUS  
PRINCIPAL SECRETARY-DoE & ORS. ... RESPONDENTS  
FILE-A (VOLUME-\_\_\_\_\_)

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Date: 29.11.2023



(TANAJI B. GAMBHIRE)  
ORIGINAL APPLICANT No. 1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH PUNE  
**IA NO. 141/2022, IA NO. 176/2023 & IA NO. 177/2023**

**IN**

ORIGINAL APPLICATION NO. 148/2016

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE & ANR ....APPLICANT

VERSUS

PRINCIPAL SECRETARY-DOE, GOM & ORS.....RESPONDENTS

**REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL APPLICANT  
TO THE IA NO. 141/2022, IA NO. 176/2023 & IA NO. 177/2023  
FILED BY PROJECT PROPONENT**

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 40 Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows;

1. I state that, Respondent No. 11-PP: M/s. Karan-Tej Paramount Properties Private Limited has filed following Interlocutory Application for seeking disposal of preliminary objections before final disposal of OA No. 148/2016 and filing of this OA shows the unethical tactics on part of PP to delay the matter and also on part of professionals acting in unprofessional manner;

Sr.	IA No.	Date of filing &Registration	Date of service	Purpose
1.	MA No. 444/2016	27.12.2016		Locus & Limitation
2.	IA No. 141/2022	17.09.2022	11.05.2023	OA to be heard after CA No. 1258/2018
3.	IA No. 176/2023	11.08.2023 14.08.2023	28.11.2023	OA to be heard after CA No. 1258/2018
4.	IA No. 177/2023	11.08.2023 14.08.2023	28.11.2023	Locus & Limitation; decide before OA

That the Original Applicant have filed detailed reply affidavit vide dated 24.02.2017 to the MA No. 444/2016.

- 2. COMPLETION OF PLEADING LONG BACK & MALAFIDE INTENTION OF PP TO PROLONG THE CASE:** I state that the pleading in OA No. 148/2016 are completed long back in the year 2017 and PP is filling MA & IA in OA, Civil Appeal & IA before Hon'ble SC only to prolong the matter and to create nuisance in the case.

Sr.	Particulars	Date	Page
1.	<b>OA No. 148/2016 Filed before NGT</b>	14.09.2019	1-276
2.	Affidavit of R.3 & R. 4-MPCB	05.12.2016	277-284
3.	Affidavit-in-Reply of R. 5 to R. 8-PCMC	06.12.2016	285-316
4.	Reply of R. 10-PP	29.12.2016	317-378
5.	Reply of R. 1 & R. 2-SEIAA	05.01.2017	379-412
6.	Rejoinder of Applicant No. 1	27.02.2017	413-496
7.	Rejoinder of Applicant No. 2	27.02.2017	497-498
8.	Affidavit of Applicant on EDC-Carbon Footprint	10.04.2017	499-699
9.	Additional Affidavit-in-Reply of R. 5 to R. 8-PCMC	07.07.2017	700-706
10.	Additional Affidavit-in-Reply of R. 10-PP	17.07.2017	707-722
11.	IA No. 444/2016 by PP preliminary objections	27.12.2016	
12.	Reply to IA No. 444/2016 by Original Applicants	27.02.2017	
13.	Hon'ble NGT heard the matter & reserved for Order	03.01.2018	
14.	Hon'ble NGT-WZ-Pune not in function regularly and only urgent matters was heard by PB/Special Bench @Principal sitting	18.01.2018	Jan.2022
15.	Civil Appeal No. 1258/2018 filed before Hon'ble SC by Ganga Skies Societies	24.01.2018	
16.	Hon'ble NGT-WZ-Pune start functioning regularly	Feb. 2022	
	<b>Tactics to prolong the matter, following baseless IA's &amp; Civil Appeal are filed</b>		
17.	IA No.141/2022 (WZ) by PP	17.09.2022	723-765
18.	IA No. 163170/2022 in CA No. 1258/2018 before Hon'ble SC	31.10.2022	
19.	Hon'ble NGT Order for listing of case for final hearing	11.05.2023	
20.	Civil Appeal No. 4280/2023 filed before Hon'ble SC	30.06.2023	
21.	IA No. 176/2023 (WZ) by PP	11.08.2023	766-879
22.	IA No. 177/2023 (WZ) by PP	11.08.2023	880-899

I state that, the Civil Appeal No. 1258/2018 is filed before Hon'ble Supreme Court on 24.01.2018 and IA No. 163170/2022 has been filed by PP herein on 31.10.2022 i.e. after lapse of 4 years 9 months. Moreover, Hon'ble NGT listed this OA for final hearing vide order dated 11.05.2023 as this

matter was already heard on 08.01.2018 and reserve for order as pleadings were completed on 17.07.2017. Thereafter, R-11-PP filed Civil Appeal No. 4280/2023 before Hon'ble Supreme Court challenging NGT Order dated 11.05.2023 and seeking direction to NGT to decide the preliminary objections at first. However, Hon'ble SC did not give any such direction to Hon'ble NGT.

**3. GROUND FOR DISMISSAL OF MA & IA's FILED BY PP:**

- A) BECAUSE**, MA No. 444/2016 and all the IA's vide No. 141/2022, IA No. 176/2023 and IA No. 177/2023 are abuse of process of law and filed with malafide intention by PP playing tactics to prolong the case and to get escape from the liability for restitution of environment & ecology. Moreover, OA No. 148/2016 is the admitted case of violation and preliminary issues are based on the disputed facts with mixed question of law.
- B) BECAUSE**, MA No. 444/2016 and all the IA's vide No. 141/2022, IA No. 176/2023 and IA No. 177/2023 dealing with the preliminary objections are not maintainable and tenable in the eyes of law as these MA & IA's against the settled position of law as held by this Hon'ble NGT as well as Hon'ble Supreme Court and therefore, these MA/IA's needs to be considered at the final stage while deciding the OA No. 148/2016 on its merit finally.
- C) BECAUSE**, disputed question of fact cannot be decided while considering application for rejection of Plaint. “[2005] 2 Suppl. SCR 1030; Held No. 1 & 2, P@1037 ¶D, P@1039 ¶D¶E¶F; Popat & Kotecha V. SBI Staff Association”
- D) BECAUSE**, Preliminary Objection seeking dismissal of OA on disputed facts is mixed question of law & facts ought to be decide at final stage.

- E) BECAUSE**, the preliminary objection on issue of limitation is substantial mixed question of law and also based on disputed questions of facts and it has to be decided at final stage as its required to go through entire records & evidences in the matter and it has to be decided at the final hearing on merit only.
- F) BECAUSE**, the settled position of law to decide the preliminary issues challenging the maintainability of plaint is mixed question of law & fact is involved with disputed facts is only at final stage and in such cases shall be heard as whole at final stage and hearing the case in parts is not permissible.
- G) BECAUSE**, the NGT is the special statute for expeditious disposal of environmental cases to avoid the unbridled & uncontrolled situation of environmental degradation derived from the object behind the statute of NGT Act, 2010.
- H) BECAUSE**, the present case is the admitted case of violations, wherein Respondent No. 10 & 11-PP have caused serious irreparable substantial damage to the environment and ecology and have not obtained a single mandatory environmental permission and PCMC, MPCB & SEIAA have admitted the violation.
- I) BECAUSE**, the Respondent No. 10 & 11-PP is trying to get escape from his strict & absolute liability of Environment Protection & its restitution & restoration by adopting such tactics of preliminary issue and Respondent No. 10 & 11-PP is abusing the process of this Hon'ble NGT.
- J) BECAUSE**, if the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the

sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

- K) BECAUSE**, the in present case the facts surrounding the issue of limitation are disputed and the determination of the issue of limitation in this case is not a pure question of law. Therefore, it cannot be decided as a preliminary issue.
- L) BECAUSE**, this Hon'ble NGT have powers granted Under Rule No. 24 of The NGT (P&P) Rules, 2011 R/W. Section 18(3) & 19(4) (K) Of NNGT Act, 2010 to recall of its order to secure end of justice and to prevent the abuse of its process being pro-environment court and onus of proof lies on the Polluter to prove his innocence as per the Vellore citizen forum case.
- M) BECAUSE**, this Hon'ble NGT required to strictly adhere to the procedures laid down in the NGT Act, 2010 & NGT (P&P) Rules, 2011 and shall not exercise inherent powers to support the polluters or suo moto powers de hors the specific provisions contained/not contained in the Act or rule. If, the case will be heard in part on the issue of limitation and then the outcome will be impugned orders will utter disregard of the objective behind NGT Act, 2010 & Rules for speedy disposal of Environment Cases and also said order will be against the settled legal position,
- N) BECAUSE**, the applicant have made out prima-facie case and there will be unbridle uncontrolled situation is stay is not granted.
- O) BECAUSE**, the PP cannot stare in the eyes of the law to continue his illegal operations and construction activity without any mandatory permission and in admitted case of violation.

- P) BECAUSE**, the Hon'ble NGT has to consider the settle position of law and ill intention of the Respondent No. 10 & 11-PP and shall decide the case finally at its requires full hearing, instead of deciding in part.
- Q) BECAUSE**, this OA is filed on 14.09.2016 and same is pending since 14.09.2016 to till date even after completion of 85 months and pleadings are completed long back, therefore this OA has to be heard on merit as well as preliminary issued decided as whole at final stage.
- R) BECAUSE**, the provisions of Section 18 (3) of NGT Act, 2010 is barrier on hearing of matters in part as environmental cases ought to be decided within six months from its filling with mandate of law on speedy disposal-“expeditiously as possible and endeavor” and mandates to hear the matter as whole at final stage only.
- S) BECAUSE**, the OA No. 148/2016 & OA No. 163/2016 have different facts & violations-law and needs to be considered separately and independently and have no similarity in any manner and differences are as below;

Sr.	Parameters	OA No. 148/2016	OA No. 163/2016	Remark
1.	PP	<b>R-10:</b> M/s. Paramount Gaurav Shelter Pvt. Ltd. <b>R-11:</b> M/s. Karan-Tej Paramount Properties Pvt. Ltd.	<b>R-10:</b> M/s. Goel Ganga Construction	different facts
2.	Project Details	Madhupushap: Ph-I & Ph-II (Altissiommo) Sr. No. 168(P) of Village-Wakad, Taluka-Mulshi, District-Pune	Swar Ganga & Ganga Skies, Sr. No. 174(P), 175(P), 176(P), 177(P) of Village-Pimpri Waghare, Taluka-Haveli, District-Pune,	different facts
3.	Land Area	18100 M <sup>2</sup>	41781.37 M <sup>2</sup>	different facts
4.	TBUA	48095.75 M <sup>2</sup>	EC=34700.66 M <sup>2</sup> Actual=10532 M <sup>2</sup>	different facts
5.	Facts-EC	No EC,	EC-21.08.2007	different facts
6.	Facts-CTE	No CTE,	CTE-17.11.2006	different facts

7.	Facts-CTO	No CTO,	CTO-25.11.2011	different facts
8.	Facts-Violations	No EC, No CTE, No CTO, Non-installation of Environmental Infrastructure,	Violations of terms & condition of EC & CTE, CTO, illegal discharge of sewage water in water body, encroachment in water body, Illegal construction of Parking Complex on 10% RG Area,	different facts
9.	EIA Notification, 2006	#Restrictions & Prohibitions # on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts  Restrictions with EC & Prohibitions without EC ¶ 1 & 2 of notification {P@395-396}	Violations of terms & condition of EC & CTE, CTO,	different facts
10.	Facts-CC	28.03.2007, 05.03.2008, 19.11.2008, 21.11.2009, 25.11.2010, 19.09.2011, 31.03.2012, 21.02.2013, 09.10.2014, 23.11.2015, 29.01.2016 {P@11-12}	28.03.2006, 04.05.2006, 29.03.2007, 22.04.2008, 19.03.2011	different facts
11.	Facts-Plinth	21.11.2009, 15.02.2009, 18.10.2013 {P@12-13}	22.07.2008, 31.12.2008	different facts
12.	Fact-OCC	09.12.2011, 18.01.2012, 31.03.2012, 31.03.2012 {¶ 13-P@360-362} ; 11.08.2016 {P@376}	10.12.2009, 15.02.2010, 03.11.2010, 31.03.2011	different facts
13.	Expansion of project	from 19.11.2008 up to <b>11.08.2016</b>	From 28.03.2006 up to <b>31.03.2011</b> & damage to Natural Water body due to discharge of sewer & non-operation of STP in <b>2014</b>	different facts
14.	SEIAA Notice	02.01.2017 {P@411}		
15.	MPCB Notice	30.11.2016; {P@283}		
16.	MA No. 444/2016	¶ 8(a): Locus ¶ 8(b): Limitation		
17.	Reply to MA 24.02.2017	¶ 3(a): Locus		

		¶ 3(b) (ff) & (gg): Limitation & Cause of Action		
18.	Hon'ble NGT: Position	<b>Forward Foundation Case-Mantri Techzone</b>		
19.	Hon'ble SC Position	<b>Forward Foundation Case-Mantri Techzone</b>		

Therefore, IA No. 163170/2022 filed in CA No. 1258/2018 is baseless and meaning less and just to create the nuisance in this OA as well as in CA No. 1258/2018.

**T) BECAUSE**, the Hon'ble Supreme Court have not stayed the proceeding in this OA No. 148/2016 and that the Civil Appeal No. 4280/2023 is disposed of by Hon'ble SC and there is no specific direction to this Hon'ble NGT for deciding the preliminary objections at the early stage.

**U) BECAUSE**, the SLP (Civil) No. 10078/2019 & SLP (Civil) No. 32134/2019 is not having any connection with the present proceedings and Review Petition, Curative Petition is also disposed of in Goel Ganga Case and judgment in the Goel Ganga Case has attended the finality.

**V) BECAUSE**, the Hon'ble Supreme Court in POPAT AND KOTECHA PROPERTY V. STATE BANK OF INDIA STAFF ASSOCIATION on 29.08.2005 have held that;

“1. Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 speaks suit as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Order VII Rule 11(d) applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force. [1037-D]

2. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a

passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into the pleading has to be construed as it stands without addition or subtraction of the words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. **[1039-D, E, F]**”

**W) BECAUSE**, the Hon’ble Supreme Court in [2022] 4 S.C.R. 46; SATHYANATH & ANR. v. SAROJAMANI; (Civil Appeal No. 3680 of 2022) on 06.05.2022 have held that;

“Held 1.1 The provisions of Order XIV Rule 2 CPC are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext. **[Para 20][61-G-H; 62-A-B]**”

**X) BECAUSE**, the Hon’ble NGT in OA No. 65/2019 on 24.04.2023 have held that;

“4. We have heard the arguments of the learned counsel for the parties and we are of the view that it cannot be denied that limitation in the present case is a mixed question of law and fact and it would require that the entire pleadings are heard as all the parties have filed their respective reply-affidavits. Therefore, it would be appropriate to hear the matter in its

entirety. The earlier observation made by us in the impugned order dated 09.11.2022 that “it would be appropriate to hear the matter on limitation issue first” is set aside and we allow this application (I.A.No.68/2023). ...”

- Y) BECAUSE**, the Hon’ble Supreme Court in Civil Appeal No. 5707 OF 2023 (*@ Special Leave Petition (Civil) No.18727 OF 2023*) Union Territory Of Ladakh & Ors. V. Jammu And Kashmir National Conference & Anr. On 06.09.2023 have held that; Hon’ble NGT cannot wait for disposal of CA No. 1258/2018 and decide the matter on last settle position, “35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805***. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

- Z)** Therefore, OA may kindly be heard finally a/w all MA & IA.

**4. DISPOSAL OF ENVIRONMENTAL CASES BY HON’BLE NGT SHALL BE AS EXPEDITIOUSLY AS POSSIBLE AND ENDEAVOUR:**

I state that, the Sub-section (3) of Section: 18 Application or appeal to Tribunal of the NGT Act, is ad below;

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

**5. HON’BLE SUPREME COURT OPINION ON “NGT IS A SPECIALISED JUDICIAL BODY FOR EFFECTIVE AND EXPEDITIOUS DISPOSAL OF CASES:**

- a) I state that the Hon’ble Supreme Court, in three judge bench judgment in the case of **(2012) 8 SCC 326**, Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India, and same is also reiterated in **2021 SCC OnLine SC 897** 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.*

- b) I state that the Hon’ble Supreme Court, in the case of **(2019) 18 SCC 494**, Explaining the purpose for constituting the special court to deal with environmental issues, in **Mantri Techzone (P) Ltd. v. Forward Foundation**, 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. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.”*

## **6. OBJECTIVE BEHIND SPECIAL ENACTMENT OF NGT:**

- a) The National Green Tribunal (NGT) is a specialized body that was formed under the NGT Act, 2010 for effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources. India has become the third country in the world after Australia and New Zealand, for setting up a specialized environmental tribunal and also the first developing country to do so.
- b) The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 1 to 6 of the Statement of Objects and Reasons being relevant are extracted herein below:-

**“Statement of Objects and Reasons,-** *The rapid expansion in industrial. Infrastructure and transportation sectors and increasing urbanization in recent years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in environment related litigation pending in various Courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern.*

*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 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.”*

- c) Therefore, I state that from the object No. 6 itself clear that this Hon’ble NGT shall hear the matter as a whole as expeditiously as possible to decide the said matter within 6 months from its filing at final stage as per the objects and Section-18 (3) of the NGT Act, 2010.

**7. BURDEN/ONUS OF PROOF LIES ON POLLUTERS IN ENVIRONMENTAL CASES:**

I state that, the Hon’ble Supreme Court have casted burden on Polluter in environmental cases as held in **(1996) 5 SCC 647**, in the case of **“Vellore Citizens Welfare Forum Versus Union of India”** that the onus of proof is on the polluter;

*“(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*

- (I) Environmental measures - by the State government and the statutory authorities—must anticipate, prevent and attack the causes of environmental degradation.*
- (II) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
- (III) The "onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign."*

Therefore, I state that, wherever there is specific burden of proof on developer/industrialist, then developer/industrialist cannot adopt the abuse of process of law to get escape from its liability.

**8. JUDGMENTS/CASE LAWS ON BEHALF OF ORIGINAL APPLICANT IN SUPPORT OF HIS CONTENTIONS REBUTTING PRELIMINARY OBJECTIONS ARE AS BELOW;**

That the Original Applicant would like to rely on the following case law;

Sr.	Description	Purpose & Page No.
1.	M.C. Mehta <b>Vs.</b> UoI, <b>(1987) 1 SCC 395,</b>	¶ <b>31-32</b> : Environment Damage Computation, Magnitude of PP, <b>P@996-999</b>
2.	Indian Council for Enviro-Legal Action Vs. Union of India, <b>(1996) 5 SCC 281,</b>	¶ <b>47</b> : Locus, <b>P@1021-1022</b>
3.	Vellore Citizens Welfare Forum <b>Vs.</b> UoI & Ors, <b>(1996) 5 SCC 647,</b>	¶ <b>11 (II)</b> : Onus of proof, <b>P@1035</b>
4.	Sterlite Industries (I) Ltd. <b>Vs.</b> UoI & Ors., <b>2013 (4) SCC 575,</b>	¶ <b>46-47</b> : Environment Damage Computation, Co-relate with magnitude & Capacity of Polluter, deterrent effect, Larger & more prosperous polluter, greater amount of compensation payable, <b>P@1077-1078</b>
5.	The Forward Foundation <b>Vs.</b> State of Karnataka, <b>2015 SCC OnLine NGT 5,</b>	¶ <b>24-33</b> : Cause of Action & Limitation, recurring cause: <b>P@1093-1098</b> ¶ <b>29</b> : Plural Remedies/Single Cause of action, <b>P@1095</b>
6.	Sunil Kumar Chugh <b>Vs.</b> DoE in Appeal No. 66/2014(PB,)	¶ <b>34-36</b> : RG Area/Open Space, <b>P@1160-1163</b> ¶ <b>45-46(2)</b> : EDC & Compensation for deficient RG Area, <b>P@1072-1174</b>
7.	Tanaji B Gambhire <b>Vs.</b> Union of India & Ors. <b>2016 SCC OnLine NGT 4213,</b>	¶ <b>41</b> : Illegal construction cannot be saved, <b>P@1185</b> ¶ <b>46-47</b> : Environmental Compliance is supreme; defaulting entity at economical disadvantage, <b>P@1186</b>

		¶53: Careless & reckless of polluter, mute spectator govt. authority <b>P@1188</b>
8.	Goel Ganga Developers India Pvt. Ltd. Vs. UoI-MoEFCC <b>(2018) 18 SCC 257,</b>	¶17: FSI & Non-FSI no concern with grant of EC, natural resources, <b>P@1203</b> ¶58-64: Quantification of EDC, Carbon Footprint, intransigent & unapologetic PP, manoeuvred & manipulation of PP, <b>P@1217-1219</b>
9.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation <b>(2019) 18 SCC 494,</b>	¶39-50: Maintainability of OA, cause of action, limitation, environmental degradation as established gives rise to independent cause of action, jurisdiction of court-erroneous mention & non-mention would not vitiate NGT jurisdiction, <b>P@1244-1246</b>
10.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors. <b>(2019) 9 SCC 288,</b>	¶2-8: Okhla Bird sanctuary case, Activity area open to sky, built-up area, confirms Goel Ganga Case judgments, <b>P@1252-1254</b>
11.	Hanumant Laxman Aroskar Vs. UoI, <b>(2019) 15 SCC 401,</b>	¶164: Environmental Matter, Bonafide of applicant, personal agenda, Respondent argument not accepted, Vague aspiration on intention of public spirited individuals does not constitute an adequate response to those interested in protection of environment, court finding-lacking bonafide-issue appropriate direction, court duty to assess environmental cases on merit, <b>P@1323</b>
12.	Keystone Realtor Pvt. Ltd. Vs. Anil V. Tharthare <b>(2020) 2 SCC 66</b>	¶13: Interpretation of Para-2 & 7 of EIA Notification, 2006: prior EC mandatory for expansion or modernisation, <b>P@1332</b> ¶19: interpretation of statute in consonance with object of legislation or delegated legislation as whole, <b>bright-line</b> test-marginal increase & material increase, <b>P@1334</b> ¶20: Expansion of project 32395.17 M <sup>2</sup> to 40480.88 M <sup>2</sup> beyond threshold limit, prior EC is mandatory, <b>P@ 1335</b>
13.	MCGM Vs Ankita Sinha & Ors. <b>2021 SCC Online SC 897,</b>	¶38-40: Rule 24: to prevent abuse of its process or to secure the ends of justice, <b>P@1345</b>

		<p>¶41: NGT is conferred with power of moulding any relief. <b>justified in the facts and circumstances of the case, P@1346</b></p> <p>¶42: <i>locus standi</i></p> <p>¶43: Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution</p> <p>¶75: <b><u>Principle 10 of the Rio Declaration</u></b> which speaks of three fundamental rights i.e., <b><u>access to information, access to public participation and access to justice,</u></b></p> <p>¶76-80: S-20 of NGT Act, precautionary principle, widest amplitude, <b>P@1352</b></p> <p>¶86: <b>locus standi</b>: Larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi. <b>P@1354</b></p> <p>¶88: liberalizing the concept of <i>locus standi</i> in environmental matters , <b>P@1354</b></p>
14.	Tanaji B Gambhire Vs Union of India & Ors, In <b>OA No. 34/2020(WZ)</b>	¶ : Expansion in Construction project, prior EC mandatory, violation of EIA Notification,
15.	Tanaji B Gambhire Vs Union of India & Ors, In <b>OA No. 33/2020(WZ)</b>	¶5: Patently integral project,
16.	Tanaji B Gambhire Vs Union of India & Ors, <b>OA No. 64/2020(WZ)</b>	¶ : Expansion in Construction project, prior EC mandatory, violation of EIA Notification, ¶13: Past violations does not exonerate subsequent grant of EC
17.	Tanaji B Gambhire Vs UoI-MoEFCC & Ors., <b>Appeal No. 32/2020(WZ)</b>	¶13: Damage: EDC 10 Crores of total project cost

18.	Tanaji B Gambhire Vs UoI-MoEFCC & Ors., <b>Appeal No. 34/2020(WZ)</b>	¶14: Damage: EDC 15 Crores of total project cost
19.	SP Muthuraman Case <b>2015 SCC OnLine NGT 169</b>	¶147-152: prior EC required
20.	Common Cause Case-(2017) 9 <b>SCC 499</b>	¶125: Ex-post facto EC cannot be granted
21.	Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, <b>2019 SCC Online NGT 1662</b>	¶14: Cause of Action & Limitation "Forward foundation case ¶24- 32", ¶15: Limitation ¶19: Sec. 20: 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be <u>inevitable to pass orders in the nature of public interest</u> . It may be said to be <u>comparable or otherwise to PIL jurisdiction</u> . Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be <u>exercised meaningfully to protect environment</u> .

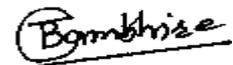
9. That the MA No. 444/2016, IA No. 141/2022, IA No. 176/2023 & IA No. 177/2023 are baseless, meritless, against the law and not tenable in the eyes of law and therefore, this Hon'ble NGT may kindly dismiss these MA & IA.

10. **SUGGESTIONS ON BEHALF OF APPLICANT:** OA No. 148/2016 may kindly be heard on merit finally along with All MA & IA for final adjudication.

11. Hence this Reply.

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

Date: 29.11.2023



MR. TANAJI B. GAMBHIRE  
ORIGINAL APPLICANT No. 1

**1377A**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH PUNE  
ORIGINAL APPLICATION NO. 148 OF 2016

IN THE MATTER OF:

**MR. TANAJI BALASAHEB GAMBHIRE & ANR.....APPLICANTS**

**VERSUS**

**PRINCIPAL SECRETARY-DoE & ORS. ....RESPONDENTS**

AFFIDAVIT IN SUPPORT OF REPLY ON BEHALF OF THE  
ORIGINAL APPLICANT TO THE IA NO. 141/2022, IA NO. 176/2023 &  
IA NO. 177/2023 FILED BY PROJECT PROPONENT

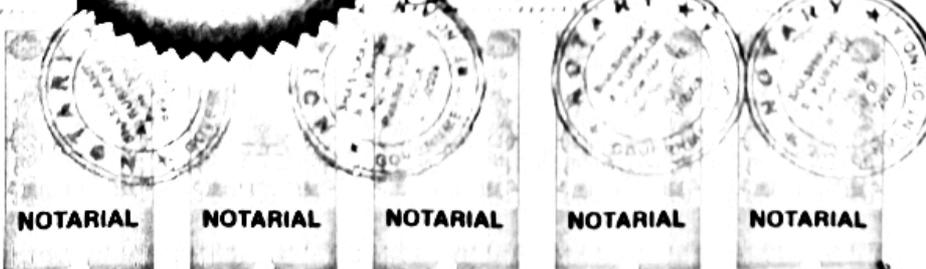
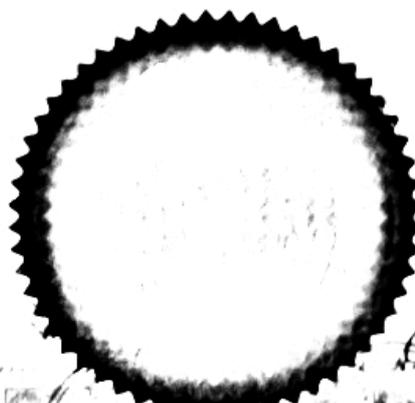
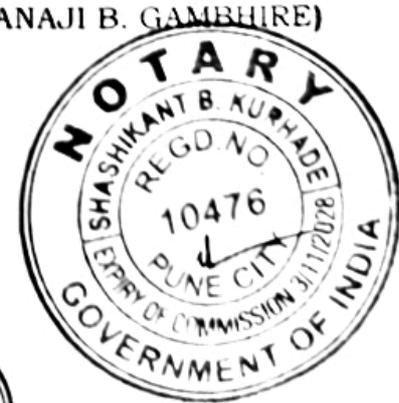
I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 40 Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

1. I state that, I am Original Applicant in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I have read the contents of the accompanying Reply to the IA No. 141/2022, IA No. 176/2023 & IA No. 177/2023, the same has been drafted under my instruction and that the Para-1 to 11 of the reply are true facts in my personal knowledge.
3. I state that, the annexures attached with the Reply are true copies of their respective and content of this affidavit are true and correct to the best of my knowledge and belief.
4. Hence this Affidavit.

*Bombhise*  
**AFFIANT**

(MR. TANAJI B. GAMBHIRE)

**BEFORE ME**  
*[Signature]*  
**Shashikant B. Kurhade**  
Notary Govt. of India



Noted and Registered  
at Sr. No. 506/2023  
Date: 29 NOV 2023

506/2023

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.4280/2023

M/S KARAN TEJ PARAMOUNT PROPERTIES PRIVATE  
LIMITED

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

O R D E R

Heard the learned counsel appearing for the appellant.

The Tribunal has fixed the matter for final hearing on 14.08.2023. It will be open for the appellant to make a prayer before the Tribunal to consider and decide the preliminary issue on that date or whenever the case is fixed for hearing

Subject to what is stated above, the appeal is disposed of.

.....J.  
[ABHAY S. OKA]

.....J.  
[SANJAY KAROL]

Signature Not Verified

Digitally signed by  
Indu M. Wadhwa  
Date: 2023.07.21  
09:58:11 IST  
Reason: I am the author of this  
document.  
New Delhi  
July 21, 2023

ITEM NO.29

COURT NO.11

SECTION XVII

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

Civil Appeal No(s). 4280/2023

M/S KARAN TEJ PARAMOUNT PROPERTIES PRIVATE  
LIMITED

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE &amp; ORS.

Respondent(s)

( IA No.128219/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.128220/2023-STAY APPLICATION )

Date : 21-07-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Ms. Bharti Tyagi, AOR

For Respondent(s)

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

The Appeal is disposed of in terms of the signed order.

Pending applications, if any, also stand disposed of.

(INDU MARWAH)  
COURT MASTER (SH)(AVGV RAMU)  
COURT MASTER (NSH)

(signed order is placed on the file)

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

Civil Appeal No. 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(Only I.A. No. 163170 of 2022 is listed)  
(IA No. 163170/2022 - INTERVENTION APPLICATION)

Date : 14-08-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI  
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s)

Mr. Aman Varma, AOR

For Respondent(s)

Mr. Vikramjit Banerjee, A.S.G.  
Mr. Gurmeet Singh Makker, AOR  
Mr. D L Chidanand, Adv.  
Mr. Rajan Kumar Chourasia, Adv.  
Ms. Sudhanshu Prakash, Adv.  
Mr. Nachiketa Joshi, Adv.Mr. Shrirang B. Varma, Adv.  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.Mr. Mukesh Verma, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. Vikas Nautiyal, Adv.  
Mr. Ashish Kumar Pandey, Adv.  
Mr. Yash Pal Dhingra, AORMs. Aparna Jha, AOR  
Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR

Mr. Nitin Lonkar, Adv.

**1381**

**Ms. Sonali Suryavanshi, Adv.**

**Ms. Pradnya Bheke, Adv.**

**Mr. Pulkit Agarwal, AOR**

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

**The matter be listed before a Bench of which one of us  
(K. V. Viswanathan, J.) is not a member.**

**(NIDHI AHUJA)  
AR-cum-PS**

**(VIRENDER SINGH)  
BRANCH OFFICER**

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

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(Only I.A. No. 163170 of 2022 is listed  
IA No. 163170/2022 - INTERVENTION APPLICATION)

Date : 05-09-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s)

Mr. Vinay Navare, Sr. Adv.  
Mr. Aman Varma, AOR

For Respondent(s)

Mr. Gurmeet Singh Makker, AOR  
Mr. Rajan Kumar Chourasia, Adv.  
Ms. Sudhanshu Prakash, Adv.  
Mr. Nachiketa Joshi, Adv.Mr. Shrirang B. Varma, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.Mr. Mukesh Verma, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. Yash Pal Dhingra, AORMr. Uday P Warunjikar, Adv.  
Mr. Makarand D. Adkar, Adv.  
Mr. Shantanu M. Adkar, Adv.  
Ms. Rekha Rani, Adv.  
Ms. Aparna Jha, AOR

Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR  
Ms. Astha Prasad, Adv.  
Ms. Prachi Thakur, Adv.

Mr. Saket Mone, Adv.  
Mr. Kush Chaturvedi, AOR  
Mr. Syed Faraz Alam, Adv.  
Mr. Devansh Shah, Adv.  
Mr. Shrey Shah, Adv.  
Mr. Atharva Gaur, Adv.  
Mr. Aayushmaan Aggarwal, Adv.

Mr. Pulkit Agarwal, AOR

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

IA No. 163170/2022 for intervention to be heard  
along with the Civil Appeal.

(ANITA MALHOTRA)  
AR-CUM-PS

(AVGV RAMU)  
COURT MASTER

A POPAT AND KOTECHA PROPERTY  
v.  
STATE BANK OF INDIA STAFF ASSOCIATION

AUGUST 29, 2005

B [ARIJIT PASAYAT AND H.K. SEMA, JJ.]

*Code of Civil Procedure, 1908 :*

C *Order VII Rule 11(d)—Rejection of plaint—Bar of limitation—Maintainability of—Plaintiff and defendant entered into an agreement in 1983 whereby the plaintiff agreed to build and develop the property owned by the defendant—Agreement stipulated that after construction of the entire building defendant would execute a registered lease deed—Building was completed in the year 1984—But no lease deed was executed—Plaintiff filed suit of declaration in 1990—Defendant filed application under O. VII R. 11(d) praying for rejection of plaint on the ground that suit was barred by limitation—High Court allowed the application and dismissed the suit—Correctness of—Held : Diverse claims were made in the plaint and disputed questions in relation to the issue of limitation were involved—The statement in the plaint without addition or subtraction does not show that it was barred by any law to attract the application of O. VII 11(d)—Hence, High Court not justified in dismissing the suit.*

F **The appellant and the respondent entered into an agreement in the year 1983 whereby the appellant agreed to build and develop the property owned by the respondent-Association. The agreement stipulated that after construction of the entire building the respondent-Association would execute a registered lease deed in favour of the appellant. The building was completed in the year 1984. However, no lease deed was executed.**

G **The appellant filed a suit for declaration of title in the year 1990. The respondent filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 praying for rejection of the plaint on the ground that the suit was barred by limitation. Diverse claims were made in the suit and disputed questions in relation to the issue of limitation were also involved. However, the High Court allowed the application and dismissed the suit. Hence the appeal.**

Allowing the appeal, the Court

A

**HELD:** 1. Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 speaks suit as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Order VII Rule 11 (d) applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force. [1037-D]

B

2. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into the pleading has to be construed as it stands without addition or subtraction of the words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. [1039-D, E, F]

C

D

E

*Saleem Bhai v. State of Maharashtra*, [2003] 1 SCC 557, *ITC Ltd. v. Debits Recovery Appellate Tribunal*, [1998] 2 SCC 70, *Arivandandam v. T.V. Satyapal*, [1977] 4 SCC 467 and *Raptakos Brett & Co. Ltd. v. Ganesh Property*, [1988] 7 SCC 184, relied on.

F

3. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order X of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is *prima facie* of the view that the suit is an abuse of this process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised. [1039-G, H]

G

4. There is a distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a

H

**A** complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. [1040-B, C]

*Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697, referred to.

**B** 5. Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement.

**C** Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13. [1040-D, E]

**D** *Sopan Sukhdeo Sable v. Assistant Charity Commissioner*, [2004] 3 SCC 137, relied on.

**E** 6. Therefore, the High Court was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the High Court was wrong in proceeding with the assumption that only the non-execution of the lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. It is not a case where the suit from the statement in the plaint can be said to be barred by any law. The statement in the plaint without

**F** addition or subtraction must show that it is barred by any law to attract the application of Order VII Rule 11. This is not so in the present case. [1040-G-H; 1041-A]

**G** 7. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. Bar of limitation does not obstruct the execution. It bars the remedy. The idea is that every legal remedy must be kept alive for legislatively fixed period of time. [1036-E, G]

**H** *France B. Martins v. Mafalda Maria*, [1996] 6 SCC 627, *V. Subba Rao v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P.*,

POPAT AND KOTECHA PROPERTY v. S.B.I. STAFF ASSON. [PASAYAT, J.] 1033

[1996] 7 SCC 626 and *N. Balakrishnan v. M. Krishna Murthy*, [1998] 7 SCC 123, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3460 of 2000.

From the Judgment and Order dated 31.3.2000 of the Calcutta High Court in A.P.O.T. No. 157 of 2000. B

U.U. Lalit, Rana Mukherjee, Abhijit Sen Gupta, Siddharth Gautam and Goodwill Indeevar for the Appellant.

S.B. Upadhyay, Vikran Yadav and Praveen Swarup for the Respondent. C

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** : Appellant calls in question legality of the judgment rendered by a Division Bench of the Calcutta High Court holding that the plaint filed by the appellant was to be rejected in terms of Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (in short the 'CPC') as the suit was barred by limitation. The order passed by learned Single Judge holding that said provision was not applicable to the facts of the case was set aside. D  
E

Factual position in a nutshell is as follows:

Appellant and respondent entered into an agreement on 19th January, 1983 whereby the appellant agreed to build and develop the property owned by the respondent—Association. A detailed agreement was accordingly executed on 19th January, 1983 which, *inter alia*, provided for regulating relationship between the parties. Para 13 of the agreement stipulated that after construction of the entire building and issuance of final completion certificate by two Chartered Engineers the appellant shall by a notice to the respondent-Association call upon it to execute a registered lease deed in its favour or in favour of its nominee whereby a lease of the 2nd floor, 3rd floor, 4th floor, 5th floor and the roof (collectively described as the demised premises) was to be granted. Several stipulations were provided in detail. It is not in dispute that the building was completed in the year 1984. Appellant claimed to have written a letter dated 4.11.1984 calling upon the respondent to execute the F  
G  
H

A lease deed in its favour. Admittedly no lease deed has been executed. The suit was filed in July, 1990, *inter alia*, with the following prayers:

B “(a) Declaration that the plaintiff alone is entitled to let out the ground floor, 2nd, 3rd, 4th, 5th floor and the roof of the said premises shortly referred to have as the ‘Builders Block’ and realize all rents, issues and profits therefrom without any interference by the defendant.

C (b) Perpetual injunction restraining the defendant from executing any lease or other documents in favour of persons in occupation of any portion of the builders block referred to in prayers (a) or in relation to any part or portion of the said block in consideration of any sum or from realizing any rent issues or profit therefrom incumbent or otherwise deal with and exercise any control or dominance over the same;

D (c) Decree for Rs.18,84,500 (Rupees Eighteen lacs eighty four thousand five hundred) only as pleaded in paragraphs 18 and 25 of the plaint.

E (d) Alternatively, an account of what is due and payable to the plaintiff by the defendant in respect of all dealings and transactions by the defendant with the person or persons in occupation of the builders block of the said premises and a decree for such sum as may be found due and payable after taking such account;

F (e) All further proper accounts enquiries and directions;

G (f) Decree for specific performance of the Development Agreement dated 19th January, 1983 be granted against the defendant in terms of Clause 16 of the said Agreement requiring the defendant to execute Deed of Lease for a period of 51 years on terms and conditions contained in the said Clause;

H (g) Mandatory injunction directing the defendant to execute and register a Deed of Lease, in favour of the plaintiff and/or its nominee or nominees in terms of Clause 18 of the Development Agreement dated 19th January, 1983 in respect of the Builders Block, being the 2nd, 3rd, 4th, 5th floor and roof as referred to above;

(h) In the event of the defendant failing to execute, register and deliver Deed of Lease, the Registrar, Original Side of this Hon'ble Court be directed to settle execute and register necessary Deed of Lease in respect of the Builders Block as referred to above for and on behalf of the defendant. A

(i) Decree for Rs.80 lacs as damages as mentioned in paragraph 12 above in addition to a decree for specific performance; B

(j) Alternatively, an enquiry, into loss and damage suffered by the plaintiff and a decree for such sum as may be found due and payable upon such enquiry; C

(k) In the event decree for specific performance as prayed for cannot be granted, a decree for damages in terms of specific performance be granted against the defendant at such rate or rates and on such basis as this Hon'ble Court may deem fit and proper; D

(l) Costs;

(m) Further or other reliefs."

An application was filed by the respondent under Order VII Rule 11 of CPC praying for rejection of the plaint on the ground that the suit as is apparent from the statement contained in the plaint itself was barred by limitation in the sense that the suit was filed beyond the period prescribed in the Indian Limitation Act, 1963 (in short 'Limitation Act'). E

Learned Single Judge dismissed the application holding that the expression "barred by any law" as occurring in the provision did not include the operation of the Limitation Act. The Division Bench was of the view that the claims made in the plaint revolve round the nucleus i.e. focal point of the execution of lease deed which was to be done sometimes in 1985 and as the suit was filed in 1999, it was clearly barred by limitation. F

Learned counsel for the appellant submitted that the approach of the Division Bench is clearly erroneous. The High Court proceeded on the basis as if the only claim related to execution of the lease deed. In fact, there were several other reliefs like claim for damages, unauthorized collection of amounts in respect of the building which admittedly were to be in possession G H

A of the present appellant with full liberty to let out the premises. Clause 12 of the agreement clearly stipulated that the appellant had the authority to let out the building without any objection and without requiring consent from the respondent-Association. The Receiver appointed by the Court on the interlocutory application filed by the applicant clearly noted that the defendant  
 B i.e. the respondent-Association had executed lease deeds on 3.4.1988, 16.7.1988 and 19.4.1999. Prayer in the plaint was to pass a decree of Rs.18,84,500 which was the amount collected by the respondent. The suit was by no stretch of imagination filed beyond the period of limitation. By its conduct the respondent had acknowledged the claim of the plaintiff-appellant and the period of limitation in any event would run from the date of acknowledgement.  
 C

*Per contra*, learned counsel for the respondent submitted that though various claims were made, as rightly observed by the High Court, focal point was non-execution of lease deed. All the other claims had their matrix thereon and, therefore, the Division Bench of the High Court was right in deciding  
 D in favour of the present respondent. It was submitted that the collections made by the respondent were for the period beyond 51 years from the date of agreement in 1983 and not for any period prior to that. There was no question of the period of limitation getting extended, even if there is an acknowledgment beyond the prescribed period of limitation.

E The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been  
 F termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. ( Also See *France B. Martins v. Mafalda Maria*, [1996] 6 SCC 627.  
 G

Bar of limitation does not obstruct the execution. It bars the remedy. (See *V. Subba Rao and Ors. v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P. and Ors.*, [1996] 7 SCC 626.

H Rules of limitation are not meant to destroy the rights of parties. They

are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the *maxim interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See *N. Balakrishanan v. M. Krishna Murthy*, [1998] 7 SCC 123).

Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

Order VII Rule 11 of the Code reads as follows:

Order VII Rule 11: *Rejection of plaint*. The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claims is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be

A barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

B

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

C

In the present case the respondent has relied upon clause (d) of Rule 11.

D

Before dealing with the factual scenario, the spectrum of Order VII Rule 11 in the legal ambit needs to be noted.

E

In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.*, [2003] 1 SCC 557 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

F

G

In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors.*, [1998] 2 SCC 70 it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

H

The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of

not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See *T. Arivandandam v. T.V. Satyapal and Anr.* [1977] 4 SCC 467). A  
B

It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*, [1982] 3 SCC 487, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. C

In *Raptakos Brett & Co. Ltd. v. Ganesh Property*, [1998] 7 SCC 184 it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII was applicable. D

There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. E  
F

Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is *prima facie* of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised. G  
H

A Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

B There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. C the distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697.

D Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without E intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

F The above position was highlighted in *Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors.*, [2004] 3 SCC 137.

G When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo's* case (supra), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from H statement in the plaint can be said to be barred by law. The statement in the

POPAT AND KOTECHA PROPERTY v. S.B.I. STAFF ASSON. [PASAYAT, J.] 1041

plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case. A

We do not intend to go into various claims in detail as disputed questions in relation to the issue of limitation are involved.

The appeal is accordingly allowed with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the case which shall be gone into in accordance with law by the Trial Court. B

V.S.S.

Appeal allowed.

[2022] 4 S.C.R. 46

A SATHYANATH &amp; ANR.

v.

SAROJAMANI

(Civil Appeal No. 3680 of 2022)

B MAY 06, 2022

**[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]**

C *Code of Civil Procedure, 1908 : Or. XIV r 2 – Court to pronounce judgment on all issues – Suit for declaration by the appellant against the respondent – Application by the respondent seeking framing of issues u/Or. XIV r 2(2), to treat those as preliminary issues – Dismissed by trial court – In revision petition, the High Court issued direction to trial court to frame preliminary issue as to whether the suit is barred by res judicata – Sustainability of – Held: Not sustainable – If the issue is a mixed issue of law and*

D *fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue – Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision – Order of the*

E *High Court to direct the trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties – Or. XIV r.2 had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2) – However, in case where the issues*

F *of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force – It is only in those circumstances that the findings*

G *on other issues can be deferred – Res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. – It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2) – Thus, the order of the High Court remanding the matter to the trial court to frame preliminary issues runs counter to*

H *the mandate of Or. XIV r 2, and is set aside.*

**Allowing the appeal, the Court**

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**HELD: 1.1** The provisions of Order XIV Rule 2 CPC are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the complaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext. [Para 20][61-G-H; 62-A-B]

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**1.2** The order of the High Court to direct the trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2). [Para 31][66-E-G]

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**1.3** The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the trial court on all the

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A issues, it would facilitate the first appellate court to decide the questions of fact even by reformulating the issues. It is only when the first appellate court finds that there is no evidence led by the parties, the first appellate court can call upon the parties to lead evidence on such additional issues, either before the appellate court or before the trial court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the lis between the parties. [Para 32][66-G-H; 67-A]

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C 1.4 Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. [Para 33][67-B]

D 1.5 The order of the High Court remanding the matter to the trial court to frame preliminary issues runs counter to the mandate of Order XIV Rule 2 of the Code and thus, not sustainable in law. The trial court would record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue. The order passed by the High Court is set aside. [Paras 34 and 35][67-C-D]

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G *Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs. & Ors.* 2021 SCC OnLine SC 792; *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.* (2006) 5 SCC 638 : [2006] 3 Suppl. SCR 414; *Major S. S. Khanna v. Brig. F. J. Dillon* AIR 1964 SC 497 : [1964] SCR 409; *Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and Ors.* AIR 1991 ALL 894; *Prithvi Raj Jhingta & Anr. v. Gopal Singh & Anr.* AIR 2007 HP 11; *Hardwari Lal v. Pohkar Mal and Ors.* AIR 1978 P&H 230; *Dhirendranath Chandra v. Apurba Krishna Chandra and Ors.* AIR 1979 Pat 34; *Usha Sales Ltd. v. Malcolm Gomes and Ors.* AIR 1984 Bom 60; *Smt. Aruna Kumari v. Ajay Kumar* AIR 1991 J&K 1; *Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by*

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*Lrs. & Anr. (2003) 3 SCC 272* : [2002] 5 Suppl. SCR 350; *Kailash v. Nanhku & Ors. (2005) 4 SCC 480* : [2005] 3 SCR 289; *Sugandhi v. P. Rajkumar (2020) 10 SCC 706*; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors. (2012) 6 SCC 430* : [2012] 4 SCR 74; *Abdul Rahman v. Prasony Bai & Anr. (2003) 1 SCC 488* : [2002] 4 Suppl. SCR 260; *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors. (2021) 9 SCC 99* – referred to.

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**Case Law Reference**

[1964] SCR 409	referred to	Para 6	C
AIR 1991 ALL 894	referred to	Para 9	
AIR 2007 HP 11	referred to	Para 10	
AIR 1978 P&H 230	referred to	Para 11	D
AIR 1979 Pat 34	referred to	Para 12	
AIR 1984 Bom 60	referred to	Para 13	
AIR 1991 J&K 1	referred to	Para 14	
[2006] 3 Suppl. SCR 414	referred to	Para 15	E
[2002] 5 Suppl. SCR 350	referred to	Para 17	
[2005] 3 SCR 289	referred to	Para 18	
(2020) 10 SCC 706	referred to	Para 19	
[2012] 4 SCR 74	referred to	Para 21	F
[2002] 4 Suppl. SCR 260	referred to	Para 23	
(2021) 9 SCC 99	referred to	Para 23	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3680 of 2022.

G

From the Judgment and Order dated 03.09.2021 of the High Court of Judicature at Madras in C.R.P. (PD) No. 680 of 2021.

S. Nagamuthu, Sr. Adv., M. P. Parthiban, A. S. Vairawan, R. Sudhakaran, Vikash Kumar, Advs. for the Appellants.

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A Siddharth Naidu, V. Balachandran for M/s Ksn & Co., Advs. for the Respondent.

The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

B 1. The challenge in the present appeal is to an order dated 3.9.2021 whereby in the revision petition filed by the defendant under Article 227 of the Constitution of India, the trial court was directed to frame preliminary issue as to whether the suit is barred by res judicata.

C 2. The plaintiffs-appellants filed O.S. No. 95 of 2016 against the respondent, their paternal aunt. The appellants claimed a declaration for declaring the appellants as absolute owners of the suit property, judgment and decree in O.S. No. 65 of 2003 as null and void, and, for permanent injunction restraining the defendant and their agents in disturbing the peaceful possession and enjoyment of the suit property by the appellants in any manner. Initially, the defendant filed an application under Order D VII Rule 11 of the Code of Civil Procedure, 1908<sup>1</sup> for rejection of the plaint but the same was dismissed by the trial court on 20.6.2017. It is thereafter, the defendant filed an application to frame issues under Order XIV Rule 2(2) of the Code to treat the following as the preliminary issues:

E “1. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para- 10 & 11.

2. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para-12.

F 3. Whether the suit is not barred by limitation as contented by the defendant in the written statement in Para-13.

4. Whether the Plaintiffs have deliberately and wantonly abused the process of the court, as contented by the defendant in the written statement in Para-15 and 16.

G 5. Whether the suit is not valued properly and court fee paid is deficient as claimed by the defendant in Para 18 of the Written statement.”

3. The learned trial court dismissed the application of the defendant on 3.10.2019. Such order of the learned trial court was challenged in

H <sup>1</sup>For short, the ‘Code’

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[HEMANT GUPTA, J.]

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revision petition under Article 227 of the Constitution of India wherein the High Court ordered the framing of issue of res judicata as preliminary issue. A

4. Learned counsel for the appellants relied upon provisions of Order XIV Rule 2 of the Code to contend such Order XIV Rule 2 has been substituted by Central Act No. 104 of 1976, whereby the Court is mandated to pronounce judgment on all issues, even though the suit can be disposed of on a preliminary issue. It was argued that such amendment was necessitated to avoid delay in the disposal of the proceedings inasmuch as if only a preliminary issue is decided, the further appeal and revision would be preferred only against the preliminary issue and after the preliminary issue is decided in favour of the plaintiffs, the evidence has to be led on the remaining issues. Therefore, to ensure expeditious disposal of the proceedings and to avoid possibility of remand by the appellate or revisional jurisdiction, it was made mandatory for the Court to record reasons on all the issues. Such finding would oblivate the possibility of remand at appellate or revisional stage, even if the finding on preliminary or other issues are to be reversed. B C D

5. Order XIV Rule 2 before amendment by the Act No. 104 of 1976 reads thus:

“R. 2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.” E

6. The said provision came up for consideration before this Court in a judgment reported as *Major S. S. Khanna v. Brig. F. J. Dillon*<sup>2</sup>. It was held that under Order XIV Rule 2 of the Code where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and postpone the settlement of the issues of fact until other issues of law have been determined. It was held as under: F G

“18. .... Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of

<sup>2</sup>AIR 1964 SC 497

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A on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers

B no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

C 7. The Order XIV Rule 2 after the substitution of Rule 2 by the Act No. 104 of 1976, effective from 1.4.1977, reads thus:

“2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

D

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

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(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

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8. Some other provisions of the Code, which are relevant to decide the issues raised in the preset appeal are as follows:

G “ORDER XX  
JUDGMENT AND DECREE

“5. Court to state its decision on each issue. – In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the

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[HEMANT GUPTA, J.]

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finding upon any one or more of the issue is sufficient for the A  
decision of the suit.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

24. Where evidence on record sufficient, Appellate Court may B  
determine case finally. - Where the evidence, upon the record is  
sufficient to enable the Appellate Court to pronounce judgment,  
the Appellate Court may, after resettling the issues, if necessary,  
finally determine the suit, notwithstanding that the judgment of  
the Court from whose decree the appeal is preferred has proceeded C  
wholly upon some ground other than that on which the Appellate  
Court proceeds.

25. Where Appellate Court may frame issues and refer them for  
trial to Court whose decree appealed from. - Where the Court  
from whose decree the appeal is preferred has omitted to frame D  
or try any issue, or to determine any question of fact, which appears  
to the Appellate Court essential to the right decision of the suit  
upon the merits, the Appellate Court may, if necessary, frame  
issues, and refer the same for trial to the Court from whose decree  
the appeal is preferred, and in such case shall direct such Court to  
take the additional evidence required; E

and such Court shall proceed to try such issues, and shall return  
the evidence to the Appellate Court together with its findings  
thereon and the reasons therefor [within such time as may be  
fixed by the Appellate Court or extended by it from time to time.”

9. The amended provision of Order XIV came up for consideration F  
before the Full Bench of Allahabad High Court in a judgment reported  
as *Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and  
Ors.*<sup>3</sup> It was held that material changes had been brought about by  
substituting Order XIV Rule 2 of the Code. The word ‘shall’ in the  
unamended provision has been replaced by the word ‘may’ in the G  
substituted provision, therefore, it is now discretionary for the Court to  
decide the issue of law as a preliminary issue, or to decide it along with  
the other issues. It was further held that even all issues of law cannot be  
decided as preliminary issues and only those issues of law falling within

<sup>3</sup> AIR 1991 ALL 89

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preliminary issues deserved to be reversed, the case per force had to be remanded to the trial Court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial Court on all the issues, both of law and fact.

9. Based upon the aforesaid reasons therefor, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because sub-rule (1) does not permit the Court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit.”

11. A Single Bench of Punjab and Haryana High Court in a judgment reported as *Hardwari Lal v. Pohkar Mal and Ors.*<sup>5</sup> compared the provision of Order XIV Rule 2 prior to and after the amendment and held as under:

“5. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly

<sup>5</sup> AIR 1978 P&H 230

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

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12. A Single Bench of Patna High Court in a judgment reported as *Dhirendranath Chandra v. Apurba Krishna Chandra and Ors.*<sup>6</sup> held that even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgment on all the issues, subject to the provision in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue relates to jurisdiction of the Court or a bar to the suit created by law for the time being in force, the Court may try such issue first. The High Court held as under:

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F “6. A plain reading of R. 2 will show that ordinarily even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgement on all issues. This ordinary rule is subject to only one exception which has been provided in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue of law relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force the court may try such issue first. It is, therefore, clear that a departure from the ordinary rule provided in sub-rule (1) of R. 2 can be made by the Court only in the circumstances mentioned in sub-rule (2) and even in these

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H <sup>6</sup> AIR 1979 Pat 34

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circumstances the Court has only a discretion that it may try an issue of law relating to the points mentioned in clauses (a) and (b) of sub-rule (2) as a preliminary issue before framing other issues. There is, however, nothing in sub-rule (2) which in my opinion makes it obligatory for the Court to try such an issue first in all cases. If, therefore, the Court is of opinion that in any particular case it will be more expedient to try all the issues together and therefore, if it refuses to try and decide any issue of law even on the points referred to in cls. (a) and (b) of sub-rule (2) as a preliminary issue before taking up other issues.

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13. A Single Bench of Bombay High Court in a judgment reported as *Usha Sales Ltd. v. Malcolm Gomes and Ors.*<sup>7</sup> held that after the amendment, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce the judgment on the same, except that the Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue. It was held to be more in the nature of discretion rather than a duty. It was held as under:

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“11. From the above it is easily seen that there is an obligation cast upon the Court that even though a case may be disposed of on a preliminary issue the Courts shall subject to the provision of sub-rule (2) pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer, there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.

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12. There is, however, a small exception carved out to the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in sub-r. (2) of R. 2 of O. 14 of the Code. The words “it may try” are clearly indicative of the fact that discretion is given

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<sup>7</sup> AIR 1984 Bom 60

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A to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue.”

14. A Single Bench of Jammu and Kashmir High Court in a judgment reported as *Smt. Aruna Kumari v. Ajay Kumar*<sup>8</sup> held as under:

B “4. ....Admittedly both the parties have to lead evidence regarding both the issues. In case issue No. 2 is allowed to be treated as preliminary the parties will certainly lead evidence in the case and instead of disposing of the case expeditiously it will prolong the matter and frustrate the very basis of law contained in Order XIV, Rule 2, Civil Procedure Code. The evidence to be led by both the parties will almost cover both the issues and it cannot, therefore, be said that by allowing issue No. 2 to be treated as preliminary the trial of the case would be expedited. When we review the whole law on the point it becomes clear that where issue of jurisdiction is a mixed question of law and fact requiring evidence to be recorded by both the sides same cannot be treated as a preliminary issue.”

D 15. The matter has also been examined by this Court in a judgment reported as *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.*<sup>9</sup> wherein it was held as under:

E “13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

“xxx xxx”

G Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there

<sup>8</sup> AIR 1991 J&K 1

H <sup>9</sup> (2006) 5 SCC 638

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can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.”

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16. This Court in *Ramesh B. Desai* held that the principles enunciated in *Major S. S. Khanna* still hold good and the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of Order XIV Rule 2 clause (a) and (b). After the amendment, discretion has been given to the Court by the expression ‘may’ used in sub-rule (2) to try the issue relating to the jurisdiction of the Court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e., the bar to file a suit before the Civil Court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order XIV Rule 2 is read along with Order XII Rule 5, the Court is expected to decide all the issues together unless the bar of jurisdiction of the Court or bar to the suit in terms of sub-rule (2) clause (a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the *lis* on a question which oust either the jurisdiction of the Court or bars the plaintiff to sue before the Civil Court.

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17. We may state that the First Schedule appended to the Code contains the procedure to be applied in respect of the matters coming for adjudication before the Civil Court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as *Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr.*<sup>10</sup> wherein it was observed as under:

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“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to

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<sup>10</sup> (2003) 3 SCC 272

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A hamper the cause of justice or sanctify miscarriage of justice.....”

18. A three Judge Bench in a subsequent judgment reported as *Kailash v. Nanhku & Ors.*<sup>11</sup> held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance the cause of justice. The Court held as under:

C “28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

E “The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer.

F The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

G 29. In *State of Punjab v. Shamlal Murari* [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

H <sup>11</sup> (2005) 4 SCC 480

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“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

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In *Ghanshyam Dass v. Dominion of India* [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

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19. This Court in *Sugandhi v. P. Rajkumar*<sup>12</sup> held that if the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was held as under:

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“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

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20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the *lis* and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is

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<sup>12</sup> (2020) 10 SCC 706

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A required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach

B the civil court to delay the proceedings on false pretext.

21. In fact, in a judgment reported as *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors.*<sup>13</sup>, this Court held as under:

C “39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this

D Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.”

E 22. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in *Ramesh B. Desai* that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of the Court” and (b) which deal with the “bar to the suit created by any law for the time being in force.” The reason to substitute Rule 2 is to avoid piecemeal

F trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

G 23. On the other hand, learned counsel for the respondent relies upon the judgments of this Court reported as *Abdul Rahman v. Prasony Bai & Anr.*<sup>14</sup>, *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors.*<sup>15</sup> and *Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs.*

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<sup>13</sup> (2012) 6 SCC 430

<sup>14</sup> (2003) 1 SCC 488

H <sup>15</sup> (2021) 9 SCC 99

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*& Ors.*<sup>16</sup> to contend that on a question of res judicata, the preliminary issue needs to be framed. A

24. In *Abdul Rahman*, this Court was examining a suit filed by the appellant in the year 1999 to declare that the defendant is not the daughter of Mangal Singh and that the appellant is in adverse possession even during the life time of Mangal Singh. An additional issue was framed regarding the jurisdiction of the civil suit to try the said suit. The High Court in proceedings passed an order on 29.11.2001 dismissing the suit on the preliminary issue whether the dispute to the present civil suit has already been decided and adjudicated by the Court and is barred by the principles of res judicata. An intra court appeal was filed which was dismissed on 4.12.2001 and thereafter, the matter travelled to this Court. In these circumstances, this Court held as under: B C

“21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.” D E

25. A perusal of the above judgment of this Court shows that it was an admitted fact that issue of res judicata and of constructive res judicata can be adjudicated as preliminary issue. Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea of res judicata can be decided as a preliminary issue. F

26. In *Srihari Hanumandas Totala*, the property was mortgaged in favour of Karnataka State Finance Corporation<sup>17</sup>. The Corporation auctioned the property as the loan was not repaid. The legal heirs of the borrower filed a suit in OS No. 138 of 2008 challenging the sale deed dated 8.8.2006 executed by the Corporation and partition of the suit property. A separate OS No. 103 of 2007 was filed by the purchaser from the Corporation. Such suit of the purchaser was decreed on G

<sup>16</sup> 2021 SCC OnLine SC 792

<sup>17</sup> For short, the ‘Corporation’

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A 26.2.2009. The decree in the said suit was affirmed by the High Court on 11.8.2007. The purchaser from the Corporation filed an application under Order VII Rule 11 for rejection of the plaint of OS No. 138 of 2008. Such application was dismissed by the learned trial court. The order was affirmed in revision by the High Court holding that the ground of res judicata could not be decided merely by looking averments in the  
 B plaint. It is the said order which became subject matter of challenge before this Court. This Court found that the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit and such a plea would be beyond the scope of Order VII Rule 11. However, in the operative paragraph, it was observed that the trial court  
 C shall consider whether a preliminary issue should be framed under Order XIV, and if so, to decide it within a period of three months of raising the preliminary issue. The operative part of the order reads thus:

D “28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.”  
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F 27. This Court was thus examining the scope of Order VII Rule 11 of the Code, whereas such is not the issue in the present appeal. In fact, the defendant has filed an application for framing of preliminary issues. The direction of the High Court is on such application. Therefore, such application needs to be considered in the light of the provisions of  
 G Order XIV Rule 2 of the Code.

H 28. In *Jamia Masjid*, the judgment and decree in a second appeal holding that the suit is barred by the principle of res judicata was the subject matter of challenge before this Court. The learned trial court decided Issue Nos. 5 and 6 related to res judicata and limitation as preliminary issue. It was held that suit was not barred by limitation but

SATHYANATH & ANR. v. SAROJAMANI  
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barred by *res judicata*. In appeal, such finding was affirmed. However, in second appeal, the matter was remanded to the trial court for disposal of the suit in accordance with law holding that the suit is not barred by *res judicata*. In appeal against such judgment and decree, appeal was remanded to the High Court. The High Court after remand held that the judgment in a representative suit under Section 92 of the Code binds the parties to the suit and would thus operate as *res judicata*.

29. In appeal before this Court, it was considered whether *res judicata* raises a mixed question of law and facts. The Court held as under:

“26. The court while undertaking an analysis of the applicability of the plea of *res judicata* determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of *res judicata* would be inapplicable. We are unable to accept the submission of the appellants that *res judicata* can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of *res judicata* turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

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62. In view of the discussion above, we summarise our findings below:

(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of *res judicata* if there

A arises a new fact which has to be proved. However, the plea of *res judicata* may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it;”

B 30. A perusal of the said judgment would show that only issue Nos. 5 and 6 were decided relating to *res judicata* and limitation as preliminary issues by judgment dated 3.2.2006. This Court set aside the finding on the preliminary issue by judgment dated 23.9.2021 i.e., almost more than 15 years later when the matter was remanded back to the trial court. The absence of the decision on all issues have necessitated the matter to be remanded back, defeating the object of expeditious disposal of *lis* between the parties. The conclusion in Para 62(i) is that the plea of *res judicata* in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact. Such finding is what this Court held in

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D ***Ramesh B. Desai***.

31. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of *res judicata* is not desirable to ensure speedy disposal of the *lis* between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the

E Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those

F circumstances that the findings on other issues can be deferred. It is not disputed that *res judicata* is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

G 32. The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate

H Court can call upon the parties to lead evidence on such additional issues,

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[HEMANT GUPTA, J.]

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either before the Appellate Court or before the Trial Court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the *lis* between the parties. A

33. Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. B

34. Therefore, the order of the High Court remanding the matter to the learned trial court to frame preliminary issues runs counter to the mandate of Order XIV Rule 2 of the Code and thus, not sustainable in law. The learned trial court shall record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue. C

35. Consequently, the appeal is allowed. The order passed by the High Court is hereby set aside. D

Nidhi Jain  
(Assisted by : Tamana, LCRA)

Appeal allowed.

Item No.4

(Pune Bench)

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

(By Video Conferencing)

**I.A. NO.68 2023 (WZ)  
IN  
ORIGINAL APPLICATION NO.65 OF 2019 (WZ)**

Mr. Ajay Jayvantrao Bhosale .... Applicant

Versus

Union of India through Secretary & Ors. ....Respondents

Date of Hearing : 24.04.2023

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

Applicant : Mr. Tanaji Gambhire, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1, R-8 and R-9  
Ms. Manasi Joshi, Advocate for R-6 and R-7  
Mr. Aniruddha Kulkarni, Standing Advocate for R-4  
Mr. R.B. Mahabal, Advocate for R-11

**ORDER**

1. By this application, the applicant has prayed to recall the order dated 09.11.2022 passed by us in the present Original Application No.65/2023 whereby we had observed in paragraph No.11 of the said order that it would be appropriate for us to deal with limitation issue first as has been pressed by the learned counsel for the Project Proponent.

2. In this application (I.A.), it is submitted by the learned counsel for the applicant that the limitation is a mixed question of law and fact. Therefore, it has to be decided at final stage as it is required to go through the entire record and evidence in the matter. It is further submitted that this is an admitted case of violation by the Project Proponent – respondent No.11, which has caused substantial damage to the environment and ecology. The preliminary issues can be those where

no evidence is required and on the basis of pleadings or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Such is not the case in the present matter. The facts surrounding the limitation are disputed.

3. Against the above plea of the applicant, learned counsel for respondent No.11 – Project Proponent has filed written submissions (Pages 1260 to 1264 of the paper-book) wherein it is submitted that this Tribunal has recently passed an order dated 01.12.2022 in Original Application No.63/2019 (Ajay Bhosale Vs. Union of India), which was not available when the earlier submissions were made on 24.10.2021 and 09.08.2022. The facts of the said matter are absolutely similar to the facts of the present case. Both matters are initiated by the same applicant. Both projects are that of construction under EIA Notification, 2006 under Category 8(a). The above order dated 01.12.2022 has dealt with the submissions of the applicant at point No.14 on the basis of Judgment dated 07.05.2015 in the case of **“Forward Foundation vs. State of Karnataka” in Original Application No.222/2014**, reported in **2015 SCC OnLine NGT 5**. In the present case, the plans (new) were approved on 21.09.2005. The buildings A, B, D and E had been completed and Completion Certificate had been issued on 22.10.2007. The buildings were completed (except “C” building) in the year 2009. The present application has been filed on 18.09.2019, almost 10 years later while limitation under Section 14 of the National Green Tribunal Act, 2010 is of six months and under Section 15, it is of five years. It is further submitted that application of respondent No.11 – Project Proponent is pending before the SEAC-3 and SEIAA for consideration under Violation Category under Standard Operating Procedure (SOP)

dated 07.07.2021. In the circumstances, the preliminary issue should be decided first, this matter being time barred.

4. We have heard the arguments of the learned counsel for the parties and we are of the view that it cannot be denied that limitation in the present case is a mixed question of law and fact and it would require that the entire pleadings are heard as all the parties have filed their respective reply-affidavits. Therefore, it would be appropriate to hear the matter in its entirety. The earlier observation made by us in the impugned order dated 09.11.2022 that “it would be appropriate to hear the matter on limitation issue first” is set aside and we allow this application (I.A.No.68/2023) and direct that the parties may argue this matter (O.A. No.65/2019) finally on the next date as learned counsel for respondent No.11 – Project Proponent submits that he has not come prepared for final arguments today.

5. I.A. No.68/2023 (WZ) is disposed of.

6. Put up the matter (O.A. No.65/2019) for final arguments on 28.07.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 24, 2023  
I.A. No.68/2023 (WZ)  
npj



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REPORTABLE

2023INSC804

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5707 OF 2023  
(@ SPECIAL LEAVE PETITION (CIVIL) NO.18727 OF 2023)

UNION TERRITORY OF LADAKH & ORS.

... APPELLANTS

**VERSUS**

JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR. ... RESPONDENTS

A1: Union Territory of Ladakh through its Chief Secretary

A2: Chief Election Officer, UT of Ladakh

A3: District Election Officer (Kargil)

A4: Administrative Secretary, Election Department, UT  
of Ladakh

R1: Jammu and Kashmir National Conference, through its  
General Secretary

R2: Election Commission of India

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Signature Not Verified  
Digitally signed by  
SONIA BHADRI  
Date: 2023.09.06  
14:36:40 IST  
Reason:

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Judgment and Order dated 14.08.2023 (hereinafter referred to as the "Impugned Judgment") rendered by a learned Division Bench of the High Court of Jammu & Kashmir and Ladakh at Srinagar (hereinafter referred to as the "High Court") dismissing Letters Patent Appeal No.151 of 2023 filed by the Appellants and upholding the interim order of a learned Single Judge dated 09.08.2023 in Writ Petition (Civil) No.1933 of 2023.

BRIEF FACTS:

4. The controversy involved in this *lis* is the non-allocation of the Plough symbol to the writ petitioner, the Jammu and Kashmir National Conference/Respondent No.1 herein (hereinafter referred to as "R1") for its candidates to contest the then-upcoming General Elections of the Ladakh Autonomous Hill Development Council, Kargil (hereinafter referred to as the "LAHDC"). In view of the urgency in the matter, the learned Single Judge passed an interim order on

09.08.2023, the operative portion whereof at Paragraph 11 reads as under:

*"11. Keeping in view that the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) stands announced, the petitioner-party is directed to approach the office of the respondents 1 to 3 & 5, for notifying the reserved symbol (plough) already allotted to it and respondents 1 to 3 & 5 shall notify the symbol allotted to petitioner-party in terms of Paragraphs 10 and 10(A) of Election Symbols (Reservation and Allotment) Order, 1968, and allow the candidates set up by the petitioner-party to contest on the reserved election symbol (plough) already allotted to the party."*

5. Aggrieved, the Appellants moved the learned Division Bench of the High Court by preferring an appeal, which after hearing was dismissed *vide* Impugned Judgment on 14.08.2023.

SUBMISSION BY THE APPELLANTS:

6. Mr. K. M. Nataraj, learned Additional Solicitor General (hereinafter referred to as the "ASG") for the Appellants submitted that the learned Single Judge and the learned Division Bench of the High Court have issued directions contrary to law. It was submitted

that both orders have been passed on an erroneous assumption that the provisions of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "1968 Order"), would be applicable in elections to the LAHDC. Learned ASG canvassed that this is not the correct legal position as the LAHDC election is being conducted by the Election Authority of the Union Territory of Ladakh constituted under Rule 5 of The Ladakh Autonomous Hill Development Councils (Election) Rules, 1995 (hereinafter referred to as the "1995 Rules"). It was contended that the Election Commission of India (hereinafter referred to as the "ECI") is empowered to hold elections to the Parliamentary and State Assembly constituencies and for the present LAHDC elections, the ECI does not exercise any authority. Thus, the learned ASG submitted that any reference to the provisions of the 1968 Order is misplaced.

7. Learned ASG, further, contended that Paragraphs No. 9, 10 and 10(A) of the 1968 Order speak of restrictions on the allotment of symbols reserved for

State Parties in States where such parties are not recognized; concession to candidates set up by a State Party at elections in other States or Union Territories, and; concession to candidates set up by an un-recognized party which was earlier recognized as a National or State Party, respectively. Thus, it was his categoric stand that such concession can be only for the purposes of Parliamentary and State Assembly elections, and not for the election in question.

8. Learned ASG submitted that the reference by the ECI in its communication dated 18.07.2023 to R1, that it can avail the concession under Paragraph 10 of the 1968 Order can neither confer any right on R1, nor compel the Election Authority of the Union Territory of Ladakh to allow the prayer of R1, as made in the Writ Petition before the High Court. With regard to the opinion of the Law Department of the Appellant No.1, as quoted in the communication of the District Election Officer (District Magistrate), Kargil in his communication dated 12.07.2023 to the Chief Electoral Officer, Union Territory of Ladakh, the same at best

was only advisory but not binding as it is for the Election Authority of the Union Territory of Ladakh to independently consider such request.

9. He submitted that none of the candidates, who have filled up and submitted their nomination forms, have either sought the Plough symbol or indicated in the relevant column that they were candidates of R1 and on this score alone, at this stage, R1 was not entitled to any indulgence by this Court.

10. He summed up his arguments by stating that, as of now<sup>1</sup>, the process of elections had already been set in motion. Learned ASG pointed out that filing of the nomination forms had begun from 16.08.2023 and reached the penultimate stage since the last date of withdrawal of nominations (26.08.2023) had already elapsed. It was stated that now only polling remained to be held on 10.09.2023 and in this view of the matter, this Court may set aside the Impugned Order.

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<sup>1</sup> This Court's order dated 01.09.2023 is quoted for ready reference:  
*'Application for impleadment is rejected.  
Heard learned counsel for the parties.  
Judgment reserved.  
List the matter for pronouncement on 06.09.2023.'*

SUBMISSIONS BY RESPONDENT NO.1:

11. Learned counsel for R1 submitted that the orders of the learned Single Judge dated 09.08.2023 and the learned Division Bench dated 14.08.2023 are self-speaking and have dealt in detail with the contentions of the Appellants and the same have been negated on cogent legal and factual grounds. It was submitted that there should not have been, in the first place, any issue with the Appellants in granting the Plough symbol for the reason that R1 is the incumbent ruling party in the LAHDC, and was entitled to the Plough symbol, since the same was neither part of the list of free symbols nor allotted to any other National or State Party, so recognized, either by the ECI or by the Election Authority for the Union Territory of Ladakh. It was submitted that a completely partisan and arbitrary approach had been adopted by the Appellants in denying their preferred symbol (Plough) for oblique reasons to deny a level-playing field between candidates. It was further submitted that the Plough symbol was well-known

to the electorate since decades as being exclusively associated with R1, the denial of the same is clearly intended to cause unjustified prejudice. It was stated that undue advantage would accrue to the remaining candidates/parties contesting the LAHDC elections.

12. He urged the Court to take note of the fact that despite the learned Single Judge having passed directions well before the commencement of even the filing of nominations, upheld by the learned Division Bench, which again, was before the starting of the nomination process, and despite there being a contempt case pending before the learned Single Judge, which was adjourned on prayer made by the Appellants, citing the pendency of the present appeal, the Appellants had not complied with the orders of the High Court. In this backdrop, submitted learned counsel, to take a stand before this Court that now due to efflux of time, no relief can be granted to R1, was clear dishonest conduct. It was submitted that this Court would not let a just cause be defeated only because of delay occasioned by the other side and the Appellants cannot

take the advantage of such delay caused by them to the detriment of R1's *bonafide*, legitimate and genuine claim.

13. Learned counsel submitted that allotment of symbols by the Appellants to the National Parties and free symbols shown in the Notification for the present elections clearly shows that the same are in conformity with the 1968 Order. Thus, he submitted, the Appellants are precluded from blowing hot and cold that they cannot and should not be permitted to selectively, as per their whims and fancies, decide as to which provisions under the 1968 Order would be applicable and which provisions would not. It was submitted that a harmonious reading of Paragraphs 9, 10, 10(A) as also 12 of the 1968 Order would indicate beyond doubt that in the absence of anything to the contrary, the Appellants were required to be guided by the 1968 Order *in toto*, which was also the indication in the letter written by the ECI to R1 and the same view was taken by the Law Department in its Legal Opinion to the Appellants.

ANALYSIS, REASONING AND CONCLUSION:

14. The relevant Paragraphs of the 1968 Order, attention to which was drawn by the learned ASG and the learned counsel for R1, are set out below:

***"9. Restriction on the allotment of Symbols reserved for State parties in States where such parties are not recognised.— A symbol reserved for a State party in any State—***

*(a) shall not be included in the list of free symbols for any other State or Union territory, and*

*(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfilment of the conditions specified in paragraph 6, for recognition as a State party in any other State:*

*Provided that nothing contained in clause (b) shall apply in relation to a political party, for which the Commission has, immediately before the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, already reserved the same symbol which it has also reserved for some other State party or parties in any other State or States.*

***10. Concessions to candidates set up by a State party at elections in other States or Union territories.— If a political party, which is recognised as a State party in some State or States, sets up a candidate at an election in a constituency in any other State in which it is not a recognised State party, then such candidate may, to the exclusion of all other candidates in the constituency, be***

allotted the symbol reserved for that party in the State or States in which it is a recognised State Party, notwithstanding that such symbol is not specified in the list of free symbols for such other State or Union territory, on the fulfilment of each of the following conditions, namely:—

(a) that an application is made to the Commission by the said party for exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment: Provided that nothing contained in this paragraph shall apply to a candidate set up by a State party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State.

**10A. Concession to candidates set up by an unrecognized party which was earlier recognized as a National or State party.**— If a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such

party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:--

(a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.

xxx

**12. Choice of symbols by other candidates and allotment thereof.**-(1) Any candidate at

*an election in a constituency in any State or Union territory, other than—*

*(a) a candidate set up by a National Party; or*

*(b) a candidate set up by a political party which is a State Party in that State; or*

*(c) a candidate referred to in paragraph 10 or paragraph 10A;*

*shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union territory by notification under paragraph 17.*

*(2) Where any free symbol has been chosen by only one candidate at such election, the returning officer shall allot that symbol to that candidate and to no one else.*

*(3) Where the same free symbol has been chosen by several candidates at such election, then—*

*(a) if of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else; and, if, those several candidates, two or more are set up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:*

*Provided that where of the two or more such candidates set up by such different*

*unrecognized political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that candidate, and to no one else;*

*(b) if, of those several candidates, no one is set up by any unrecognised political party and all the independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and*

*(c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and allot that free symbol to the candidates on whom the lot falls, and to no one else."*

15. Sections 12 and 13 of the Ladakh Autonomous Hill Development Councils Act, 1997<sup>2</sup> (hereinafter referred to as the "1997 Act") read as under:

**"12. Disputes regarding elections. - (1) No election shall be called in question except by an election petition presented in such**

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<sup>2</sup> This repealed The Ladakh Autonomous Hill Development Councils Act, 1995 (President's Act No.1 of 1995).

manner as may be prescribed and before such authority as may be appointed by Government, from time to time, by notification in the Government Gazette:

Provided that no person below the rank of a District Judge shall be appointed for the purpose of this section.

(2) No election shall be called in question except on any one or more of the following grounds, namely: -

(a) that on the date of his election the returned candidate was not qualified or was disqualified, to be chosen to fill the seat in the Council;

(b) that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation: - For the purposes of this section "corrupt practice" shall mean any of the corrupt practices specified in section 132 of the Jammu and Kashmir Representation of the People Act, 1957;

(c) that any nomination has been improperly rejected;

(d) that the result of the election in so far as it concerns the returned candidate has been materially affected-

(i) by any improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote; or

(iv) by the reception of any vote which is void; or

(v) by any non-compliance with provisions of this Act or of any rules or orders made thereunder.

(3) At the conclusion of the trial of an election petition the authority appointed under sub-section (1) shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

(4) If a petitioner in addition to calling in question the election of a returned candidate makes a declaration that he himself or any other candidate has been duly elected and the authority under sub-section (1) is of opinion that-

(a) in fact the petitioner or such other candidate has received the majority of valid votes; or

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained the majority of the valid votes,

the authority as aforesaid shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

**13. Procedure for election disputes.** - The procedure provided in the Code of Civil Procedure, Samvat 1977 in regard to suits shall be followed by the authority appointed under section 12 as far as it can be made

*applicable in the trial and disposal of an election petition under this Act."*

16. It requires no reiteration that the powers of this Court and the High Courts vested under the Constitution cannot be abridged, excluded or taken away, being part of the Basic Structure of our Constitution. Reference need only be made to decisions in ***His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala***, (1973) 4 SCC 225; ***Indira Nehru Gandhi v Raj Narain***, 1975 Supp SCC 1; ***Minerva Mills Ltd. v Union of India***, (1980) 3 SCC 625; ***L Chandra Kumar v Union of India***, (1997) 3 SCC 261 and more recently, to ***Kalpana Mehta v Union of India***, (2018) 7 SCC 1 and ***Rojer Mathew v South Indian Bank Limited***, (2020) 6 SCC 1, all of which were rendered by a Bench of 5 or more learned Judges. Section 12 of the 1997 Act need not detain us. Insofar as Section 13 of the 1997 Act is concerned, it is by now too well-settled that the availability of alternative efficacious remedy is no bar to the exercise of high prerogative writ jurisdiction, in the light of various decisions, including but not limited to, ***State of Uttar Pradesh v Mohammad Nooh***, 1958 SCR

**595; Madhya Pradesh State Agro Industries Development Corporation Ltd. v Jahan Khan, (2007) 10 SCC 88; Maharashtra Chess Association v Union of India, (2020) 13 SCC 285.** Even on the anvil of **Radha Krishan Industries v State of Himachal Pradesh, (2021) 6 SCC 771**, Section 13 of the 1997 Act does not, and cannot, impede a Constitutional Court from proceeding further. We do not wish to multiply established authorities on the point but would add the very recent **Godrej Sara Lee Ltd. v Excise and Taxation Officer-cum-Assessing Authority, 2023 SCC OnLine SC 95** to the list enumerated above.

17. At the threshold, it is noted that the ECI deals with the conduct of elections to the Parliament, the State Legislative Assemblies and the State Legislative Councils. The Union Territory of Ladakh does not currently have a Legislative Assembly. The last election to the Parliamentary constituency was held in the year 2019. That said, first things first. The Legal Opinion by the Law Department remains internal advice, and advice alone, and as such, the learned ASG was

correct in contending that the same would not create/confer any right in favour of R1. In ***Mahadeo v Sovan Devi***, 2022 SCC OnLine SC 1118 (where one of us, Vikram Nath, J. was part of the *coram*), the Court, after considering various case-laws, held that "*It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. ...*"

18. In ***Kalpana Mehta*** (*supra*), Hon. Dipak Misra, C.J.I., with whom 4 learned Judges concurred, stated:

"40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in Union of India v. Raghbir Singh [Union of India v. Raghbir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. thus : (SCC p. 766, para 7)

"7. ... The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ... With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is

especially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India."

And again: (SCC p. 767, para 11)

"11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41. This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to

declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43. In S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in Suresh Seth v. Indore Municipal Corpn. [Suresh Seth v. Indore Municipal Corpn., (2005) 13 SCC 287] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the

legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn. v. Union of India* [*Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44. Recently, in *Census Commr. v. R. Krishnamurthy* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], the Court, after referring to *Premium Granites v. State of T.N.* [*Premium Granites v. State of T.N.*, (1994) 2 SCC 691], *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592], *State of M.P. v. Narmada Bachao Andolan* [*State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] and *State of Punjab v. Ram Lubhaya Bagga* [*State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021], held : (*R. Krishnamurthy case* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], SCC p. 809, para 33)

"33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in Virendra Singh v. State of U.P. [Virendra Singh v. State of U.P., AIR 1954 SC 447] has observed : (AIR p. 454, para 34)

"34. ... We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate

of its protecting provisions and flashing the flaming sword of its inspiration."

**46.** While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this context, has been aptly described in *K.S. Srinivasan v. Union of India* [*K.S. Srinivasan v. Union of India*, AIR 1958 SC 419] wherein it was stated : (AIR p. 433, para 50)

"50. ... All I can see is a man who has been wronged and I can see a plain way out. I would take it."

**47.** Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr B.R. Ambedkar as "the very soul of the Constitution – the very heart of it – the most important Article". Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals."

(emphasis supplied)

19. The observations afore-referred are in perfect sync with what is expected of Constitutional Courts. They are not restricted only to Articles 32 or 226 of the Constitution but lay down a talisman of sorts.

20. The learned ASG also submitted that the Appellants were entitled to take an independent decision. This goes against their stand before the learned Division Bench. If we were to agree with this, the obvious import, then, would be that the Appellants were required to take a decision independently. As noted in Paragraphs 5 and 11 of the Impugned Judgment, the Appellants contended that the ECI was the competent authority to allot symbols and not the Election Authority. What then was the reason for the Appellants to shift stands? When read in conjunction with the finding at Paragraph 13 of the Impugned Judgment the Appellants' acts leave no shred of doubt in our minds, that circumstances forcing this Court to intercede have arisen. Let us for a moment, however, consider that the Appellants, as now sought to be projected, were entitled to arrive at an independent decision. Yet,

such decision could not be whimsical, arbitrary or capricious. It would necessarily have to be: (a) in accordance with lawful discretion; (b) reasonable, and; (c) equitable and just. The Court would indicate that a genuine request, in the attendant facts, could not have been turned down only on the ground that there was no provision for the same, when such request could be acceded to (i) without any violation of law, and; (ii) is within the jurisdictional domain and capacity of the authority concerned, and; (iii) does not prejudice any other stakeholder, and; (iv) does not militate against public interest.

21. The High Court, being a Constitutional Court, is not, by any stretch of imagination, precluded from issuing a direction of the nature issued by it in the instant case, under Article 226 of the Constitution of India, more so when such direction does not violate any statutory provision. In ***High Court of Tripura v Tirtha Sarathi Mukherjee*, (2019) 16 SCC 663**, this Court had answered, in the affirmative, as to the power of the High Courts under Article 226 to direct for actions, in

a rare and exceptional situation, which do not find mention in the provisions concerned. Noticing and relying upon **High Court of Tripura** (supra), in **Aish Mohammad v State of Haryana, 2023 SCC OnLine SC 736**, we held:

**"24. Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct for fresh consideration of a representation, even in the absence of specific provisions. In High Court of Tripura v. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek re-evaluation of examination answer scripts? Answering, this Court held:**

**"20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt**

this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. **The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.**

21. **Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.**

(emphasis supplied)"

(emphasis supplied by us via bolding)

22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to

hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

23. A detailed dive into the sequence of events is apposite. R1 was before the concerned authorities, by way of representation, well in time, and much before even the Notification dated 02/05.08.2023 was published, by impugning the Notification dated 26.07.2023 which denied it the Plough symbol. R1 had moved the ECI, which opined, by way of communication dated 18.07.2023 that the ECI does not allocate any symbol for local body elections as the same falls within the domain of the State Election Commission concerned. The ECI stated that as there is no Legislative Assembly in the Union Territory of Ladakh and the 1968 Order does not provide for recognition to parties in a Union Territory without a Legislative

Assembly, R1 could not be recognised in the Union Territory of Ladakh. However, it was further noted that as R1 is a recognized State Party in the Union Territory of Jammu and Kashmir with its reserved symbol being the Plough, it could avail concession under Paragraph 10<sup>3</sup> of the 1968 Order.

24. On 15.05.2023, the ECI updated its Notification dated 23.09.2021 specifying the names of recognised National and State Parties and the list of free symbols where R1 was again recognised as a State Party, though for the Union Territory of Jammu and Kashmir only. On 31.05.2023, R1 made a representation to the Appellant No.2 seeking recognition as a State Party and for the allotment of the Plough symbol to it for all elections in the Union Territory of Ladakh. Appellant No.2 forwarded the said representation to Appellant No.3 for comments. On 07.06.2023, Appellant No.3 advised Appellant No.2 to approach the ECI. On 08.06.2023, R1 sought recognition as a State Party in the Union Territory of Ladakh and allotment of the Plough symbol.

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<sup>3</sup> Already extracted *supra*.

25. On 07.07.2023, R1 represented to Appellant No.2 seeking recognition as a State Party in the Union Territory of Ladakh with the Plough symbol. Appellant No.2 forwarded the said representation to Appellant No.3 on 11.07.2023 and sought comments thereon. On 12.07.2023, Appellant No.3 wrote to Appellant No.2, incorporating the opinion of the Law Department, which was in favour of R1. Appellant No.3 indicated that R1 can be recognised and provided reserved symbol for LAHDC elections by the Administration of Union Territory of Ladakh under the relevant rules.

26. No action was taken and no order was passed pursuant to Appellant No.3's communication dated 12.07.2023 to Appellant No.2. Then, the Election Department of the Union Territory of Ladakh issued a Notification on 26.07.2023 notifying the list of reserved and free symbols, in terms of the ECI's Notification dated 15.05.2023. R1 approached the High Court on 29.07.2023 challenging the notification dated 26.07.2023 and seeking a mandamus to notify the Plough

symbol as its reserved symbol for elections to LAHDC. The Writ Petition being pending, on 05.08.2023, the Election Department of the Union Territory of Ladakh notified the schedule of elections to constitute the 5<sup>th</sup> LAHDC, Kargil. In such background, an interim order came to be passed by the learned Single Judge and affirmed by the learned Division Bench.

27. This Court notes, with concern, that the Appellants, while sitting on the representation of R1, went ahead and notified the elections on 02/05.08.2023. We are unable to appreciate such conduct. This recalcitrance to decide in time speaks volumes. Instances like these raise serious questions.

28. Having considered the matter *in extenso*, the Court does not find any merit in the present appeal. The request for allotment of the Plough symbol by R1 was *bonafide*, legitimate and just, for the plain reason that in the erstwhile State of Jammu and Kashmir (which included the present Union Territory of Ladakh), it was a recognized State Party having been allotted the

Plough symbol. Upon bifurcation of the erstwhile State of Jammu and Kashmir and the creation of two new Union Territories, namely the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, though the ECI had not notified R1 as a State Party for the Union Territory of Ladakh, it cannot be *simpliciter* that R1 was not entitled for the allotment of plough symbol to it, in the factual background. What is also clear is that the Appellants are attempting to approbate and reprobate, which this Court will not countenance.

29. In the present case, there is no conflict with any other stakeholder for the reason that the Plough symbol is neither a symbol exclusively allotted to any National or State Party nor one of the symbols shown in the list of free symbols. Thus, there was and is no impediment in such symbol being granted to R1. This is also fortified in the factual setting of the Plough symbol being the reserved symbol for R1 in the erstwhile State of Jammu and Kashmir and even for the Union Territory of Jammu and Kashmir, as it now exists, where the same symbol stands allotted to it.

30. The contention of the learned ASG for the Appellants that the Plough symbol cannot be allotted, neither has been supported by any reason nor any legal impediment to such grant has been shown. In the absence of anything contrary in any rule framed for conduct of the elections in question, relating to allotment of symbols, the provisions of the 1968 Order can safely be relied upon, at the very least, as a guideline to exercise of executive power of like nature. Thus, a harmonious reading of Paragraphs 9, 10, 10(A) and 12 would clearly indicate that under the terms of the 1968 Order, the request of R1 is not bereft of justification. At the cost of repetition, the Court would indicate that nothing substantive has been shown to this Court to indicate that allotment of the Plough symbol would in any way be an infraction or go against the public interest.

31. Another major issue canvassed by the learned ASG on behalf of the Appellants, to the effect that no relief be granted to R1 due to the election process

having reached the penultimate stage, unfortunately, has also to be noted to be rejected. Having chosen, with eyes open, to not comply with successive orders of the learned Single Judge and the learned Division Bench, both of which were passed well in time, such as not to stall/delay the notified election schedule, the Appellants cannot be permitted to plead that interference by us at this late juncture should not be forthcoming.

32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore *status quo ante* are not in the realm of any doubt. The relief(s) granted in the lead opinion by

Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in ***Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1*** is enough on this aspect. We know full well that a 5-Judge Bench in ***Subhash Desai v Principal Secretary, Governor of Maharashtra, 2023 SCC OnLine SC 607*** has referred ***Nabam Rebia*** (*supra*) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back *status quo ante*. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In ***Harbhajan Singh v State of Punjab, (2009) 13 SCC 608***, a 2-Judge Bench said:

*"15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean*

that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention."

(emphasis supplied)

33. In **Ashok Sadarangani v Union of India, (2012) 11 SCC 321**, another 2-Judge Bench indicated:

"29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

(emphasis supplied)

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in **State of Haryana v G D Goenka Tourism Corporation Limited, (2018) 3 SCC 585<sup>4</sup>**:

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<sup>4</sup>The reference was eventually answered in **Indore Development Authority v Manoharlal, (2020) 8 SCC 129**.

"9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals."

(emphasis supplied)

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate

Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 680***<sup>5</sup>. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and

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<sup>5</sup> See Paragraphs 27 and 28 in the report on this point.

Municipalities to other arenas as well. Indicatively, the interpretation of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned<sup>6</sup>. We have looked at Articles 243-0, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, *inter alia*, of varying Bench-strength of this Court in ***N P Ponnuswami v Returning Officer, Namakkal Constituency***, 1952 SCR 218<sup>7</sup>; ***Durga Shankar Mehta v Thakur Raghuraj Singh***, (1955) 1 SCR 267; ***Hari Vishnu Kamath v Syed Ahmad Ishaque***, (1955) 1 SCR 1104; ***Narayan Bhaskar Khare (Dr) v Election Commission of India***, 1957 SCR 1081; ***Mohinder Singh Gill v Chief Election Commissioner***, (1978) 1 SCC 405; ***Lakshmi Charan Sen v A K M Hassan Uzzaman***, (1985) 4 SCC 689; ***Indrajit Barua v Election Commission of India***, (1985) 4 SCC 722; ***Election Commission of India v Shivaji***, (1988) 1 SCC 277; ***Digvijay Mote v Union of***

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<sup>6</sup> ***Sanjay Dubey v State of Madhya Pradesh***, 2023 INSC 519 @ Paragraph 18.

<sup>7</sup> Where the Court held that “The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.”, with respect to Article 329(b) of the Constitution.

*India*, (1993) 4 SCC 175<sup>8</sup>; *Boddula Krishnaiah v State Election Commissioner, Andhra Pradesh*, (1996) 3 SCC 416; *Anugrah Narain Singh v State of Uttar Pradesh*, (1996) 6 SCC 303; *Election Commission of India v Ashok Kumar*, (2000) 8 SCC 216; *Kishansing Tomar v Municipal Corporation, Ahmedabad*, (2006) 8 SCC 352; *West Bengal State Election Commission v Communist Party of India (Marxist)*, (2018) 18 SCC 141; *Dravida Munnetra Kazhagam v State of Tamil Nadu*, (2020) 6 SCC 548; *Laxmibai v Collector*, (2020) 12 SCC 186, and last but not the least, *State of Goa v Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401<sup>9</sup>. On scrutiny, in combination with the timelines and facts of the matter herein, we are sure that the High Court did not falter.

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions *supra*, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to

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<sup>8</sup> Where, apropos Article 324 powers of the ECI, this Court held “*However, it has to be stated this power is not unbridled. Judicial review will still be permissible, over the statutory body exercising its functions affecting public law rights.*”

<sup>9</sup> Where the learned 3-Judge Bench has considered a catena of the precedents relevant to the issue(s) before it.

interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time<sup>10</sup>, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power *per se* of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

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<sup>10</sup> *B S Hari Commandant v Union of India*, 2023 SCC OnLine SC 413 @ Paragraph 50.

38. The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.

39. This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections

arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that - misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.

40. As made clear by us in the foregoing paragraphs, the situation emanating herein is, in a manner of speaking, unprecedented. With a sense of anguish, it would not be wrong to say that the instant judgment has been invited upon themselves by the Appellants. The

orders of the High Court, in our considered opinion, were in aid of the electoral process, and no fault can be found therewith.

41. The learned ASG's submission that nobody representing R1 had filed his/her nomination form, by the last date notified, is inapposite, inasmuch as in the position existing, no candidate/representative affiliated with R1 could have filled up the form as the Plough symbol was neither a reserved symbol nor a free symbol, and thus, could not have been opted for by any candidate when filing the nomination form. The serious consequence was that R1's identity as a political party was eclipsed, right before the election to the LAHDC, where it was the incumbent party in power.

42. This Court has previously bestowed consideration on the importance of the symbol in an electoral system, especially one allotted to a political party. Taking note of the 3-Judge Bench decision in ***Shri Sadiq Ali v Election Commission of India, New Delhi, (1972) 4 SCC 664***, another Bench of 3 learned Judges in ***All Party***

**Hill Leaders' Conference, Shillong v Captain W A Sangma, (1977) 4 SCC 161** put it thus:

"29. For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden, be effaced.<sup>11</sup>"

(emphasis supplied)

43. Placing reliance on **Shri Sadiq Ali** (supra), a 2-Judge Bench summed up as under, in **Edapaddi K Palaniswami v TTV Dhinakaran, (2019) 18 SCC 219**:

**"39. We say so because the efficacy of having a common symbol for a political group has been underscored in Sadiq Ali v. Election Commission of India [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] . In para 21 of the said judgment, this Court observed thus : (SCC pp. 674-75)**

**"21. ... It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of**

<sup>11</sup> Maintained as appearing in the SCC version available on SCC OnLine; should be read as 'effaced'.

illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. ... The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. ..."

(emphasis supplied)

And again in paras 40 and 41 it is observed thus : (Sadiq Ali case [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] , p. 682)

"40. ... It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. ... If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants. ... Para 15 is intended to effectuate and subserve the main purposes and objects of the Symbols Order.

The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. ... The Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.

41. ... Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. ..."

(emphasis supplied)

**40.** This decision in Sadiq Ali [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] has been followed in Kanhiya Lal Omar v. R.K. Trivedi [Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628] and in para 10 thereof, the Court observed thus : (SCC pp. 635-36)

**"10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be**

it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis – in other words, “on systematised differences and unresolved conflicts”. That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration, etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.”

*(emphasis supplied)"*  
(emphasis supplied by us *via* bolding)

44. For reasons aforesaid, the entire election process, initiated pursuant to Notification dated 02.08.2023 issued by the Administration of Union Territory of Ladakh, Election Department, UT Secretariat, Ladakh, under S.O.53 published *vide* No.Secy/Election/2023/290-301 dated 05.08.2023 stands set aside. A fresh Notification shall be issued within seven days from today for elections to constitute the 5<sup>th</sup> Ladakh Autonomous Hill Development Council, Kargil. R1 is declared entitled to the exclusive allotment of the Plough symbol for candidates proposed to be put up by it.

45. Accordingly, this appeal stands dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) to be deposited in the Supreme Court Advocates on Record Welfare Fund. The same be done within two weeks, and receipt evincing proof thereof be filed with the Registry of this Court within a week thereafter. IAs

170883/2023, 170885/2023 and 174512/2023 be treated as formally allowed.

46. Two further consequences flow:

(a) Writ Petition (Civil) No.1933 of 2023 pending at the High Court at Srinagar is also disposed of in the above terms.

(b) CCP(S) No.340 of 2023, statedly listed next on 08.09.2023 before the learned Single Judge, survives. The same be proceeded with expeditiously, in accordance with law, considering the present judgment.

.....J.  
[VIKRAM NATH]

.....J.  
[AHSANUDDIN AMANULLAH]

NEW DELHI  
06<sup>th</sup> SEPTEMBER, 2023